TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 184 Y.S. 15

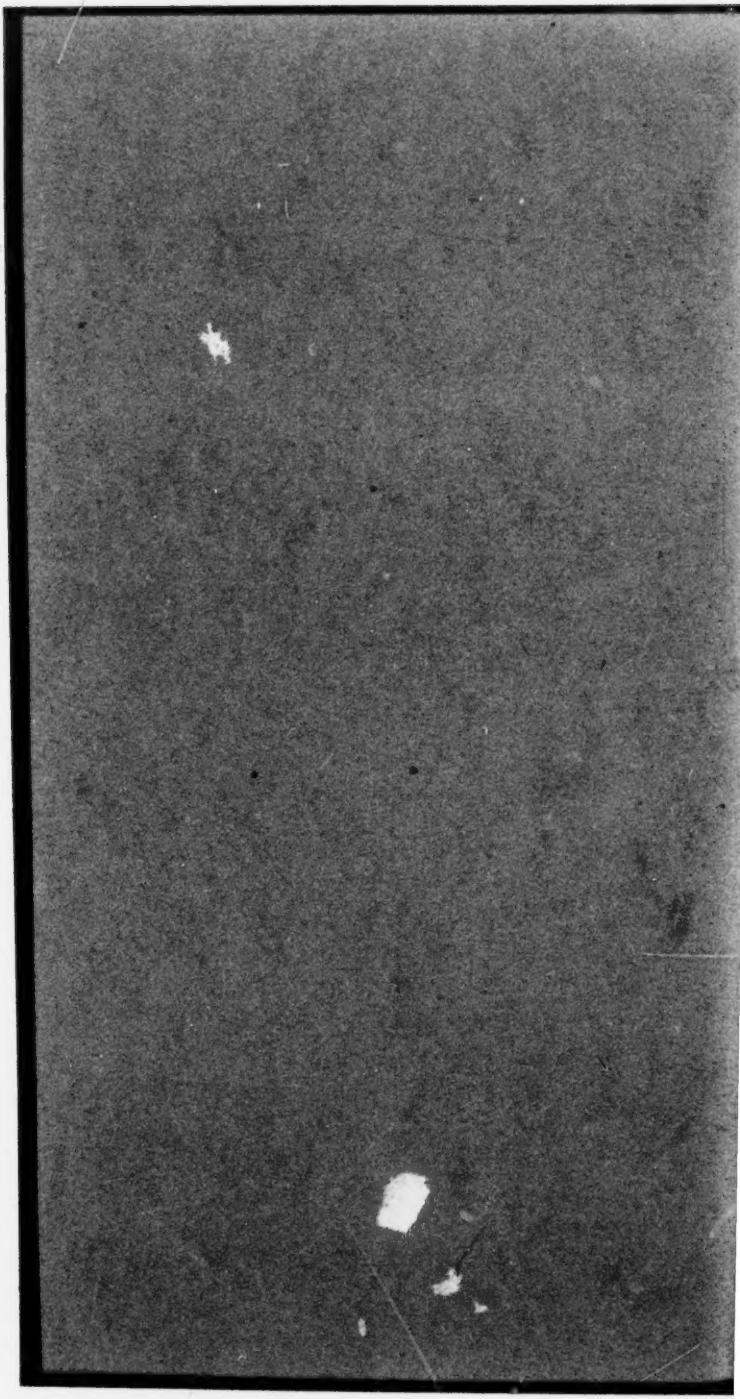
THE UNITED STATES, PETITIONER,

vs.

E. A. MORRISON & SON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FILED MAY 4, 1898.
CERTIORARI AND RETURN FILED JUNE 9, 1898.
(16,230)



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a United States circuit court of appeals for the second circuit.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Transcript of record.—Appeal from the circuit court of the United States for the southern district of New York.

1 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post-office building in the city of New York, on the 4th day of April, 1895.

Present, Hon. E. Henry Lacombe, circuit judge.

In the matter of certain importations of merchandise made by E. A. Morrison & Son, on the vessels and at the dates as set forth in the annexed Schedule A, which is hereby referred to and made a part hereof.

SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Entered.	Protest No.	Decision.
17677	La Champagne	Feb 4 91	12958 A 16940	March 5 95
29188	La Bretagne	" 25 92	do. do.	do. do.

2 SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 60 per cent ad valorem on certain beads, stones, &c., thereby making errors of law and fact by failing to find, or finding the contrary of, the following propositions:

1. Said merchandise is glass beads, loose, unthreaded, or unstrung.
2. Said merchandise is imitations of precious stones, composed of glass or paste, and does not exceed one inch in dimensions and is not set.
3. Said merchandise is manufactures, of which metal, and not glass, is the component material of chief value.
4. Said merchandise assimilates to precious stones within the sense and meaning of section 5, act of October 1, 1890.
5. The merchandise of which proposition 1 is true is dutiable at 10 per cent ad valorem under par. 445 of said last mentioned act.
6. The merchandise of which proposition 2 is true is dutiable at 10 per cent ad valorem under par. 454 of said act.
7. The merchandise of which proposition 4 is true is dutiable at 10 per cent ad valorem under par. 454 and section 5 of said act.
8. The remaining merchandise is dutiable under par. 215 of said act at 45 per cent ad valorem.

3 EXHIBIT A.

CUSTOM HOUSE, PORT OF NEW YORK,
Collector's Office, Aug. 10, 1891.

Hon. Board of U. S. Genl. Appraisers, at the port of New York.

GENTLEMEN: I submit the protests of E. A. Morrison & Son, Nos. * * * * & 16,940 from the assessment of duty by this office at the rate of 60% ad val. on certain so-called beads.

An inspection of the invoice shows that the merchandise was returned by the appraiser as manf's glass 60%. Duty was assessed thereon at the rate stated under the provisions of par. 108, N. T. Reference is made to the two special reports of the U. S. appraiser herewith.

I have to report that the claimants have complied with the requirements of sec. 14 of the act of June 10, 1890.

The naval officer concurs in the decision of this office.

The entries and invoices covered by the above protests are inclosed herewith.

Repectfully, yours,
(Signed) J. J. COUCH,
Special Deputy Collector.

EXHIBIT B.

NEW YORK, *Apr. 17, 1891.*

COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Protest is hereby made against your decision assessing duty at 60% ad val. on beads and imitation stones covered by entries below named. The ground of objection is that said merchandise is imi-
4 tations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set, and is dutiable at 10% ad val. only under par. 454, act of Oct. 1, 1890. If not as aforesaid, said merchandise is glass beads loose, unthreaded, or unstrung, and is dutiable at 10% ad val. only under par. 445, same act.

The excess is paid under compulsion, solely to obtain possession of said merchandise.

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks and Nos.
17677	La Champagne.	Feb. 4 91	C	Apr. 9 91.	634 37
29188	La Bretagne.	" 25 "	C	" 10 "	642 45 and various as per entries and invoices.

Respectfully,

E. A. MORRISON & SON,
By COMSTOCK & BROWN,
Attorneys, 80 Broadway, New York City.

The offer is hereby made to furnish evidence to the Board of the United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

EXHIBIT C.

PORT OF NEW YORK CITY,
Appraiser's Office, May 29, 1891.

Referring also to their protest 16,940 against the assessment of duty at the rate of 60% ad val. on certain so-called beads and imitation stones imported by them per "La Champagne" and "La Bretagne," Feb. 4 & 25, 1891, respectively claimed to be dutiable at 10% ad val., I have to report that the merchandise in question consisted of strung beads and loose beads, all of which were returned for duty at 60% ad val. under No. 108, N. T., but item designated as 6. 19/20 masses, on invoice No. 2534, case No. 637, were loose beads, and should have been returned for duty under 445 N. T., in harmony with decision G. A. 386 of March 2, 1891,

Very respectfully,

(Signed) M. CORBETT,
Assistant Appraiser.

[Not for publication.]

EXHIBIT D.

Before the U. S. General Appraisers at New York, Mar. 5th, 1895.

In the matter of the protest 12958 A/16940 of E. A. Morrison & Son against the decision of the collector of customs at New York, as to the rate and amount of duties chargeable on certain glass beads imported per "La Champagne" and "La Bretagne" and entered Feb. 4 & 25, 1891.

Opinion by Sharretts, G. A.:

We find as facts in this case:

(1) That the goods described in invoice No. 2354, per "La Champagne," case No. 637, as "619/20 masses mat jewel stones," &c., are loose beads, unthreaded or unstrung, of the same character as those subject of G. A. 386.

(2) That the remainder of the goods covered by the protest are glass beads, threaded or strung upon threads or cords.

We accordingly hold that the goods covered by our first finding of fact are dutiable as claimed, at 10% ad valorem, under paragraph 445, act of October 1, 1890, and to that extent sustain the protest; and that the remainder of the goods, covered by our second finding of fact, are dutiable as assessed, at 60% ad valorem, under paragraph 108 of said act, and the protest, in that regard, is overruled.

W. F. LUNT,
J. B. WILKINSON, Jr.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

6 United States circuit court, southern district of New York.

In the matter of the application of E. A. Morrison for a review of the decision of the Board of U. S. General Appraisers as to certain importations per "La Champagne," February 4, 1891; "La Bretagne," February 25, 1891. No. 2174.

Testimony taken before Hon. George H. Sharpe, as an officer of the court, in the above-entitled matter, pursuant to an order of reference by said court, dated June 4, 1895.

NEW YORK, *November 14, 1895.*

Appearances: For the importers—Albert Comstock (of Comstock & Brown). For the collector and Government—James T. Van Rensselaer, asst. U. S. attorney.

CHARLES H. BALDWIN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. Mr. Baldwin, with what concern are you connected?

A. With Edward A. Morrison & Son, 893 Broadway, this city.

Q. The importers in this case?

A. Yes, sir.

7 Q. And in what capacity are you employed there?

A. Salesman.

Q. Do you know the various kinds of merchandise imported and sold by that house?

A. Yes, sir.

Q. On the importation of that house per "La Bretagne," February 25, 1891, the invoice included a number of articles, described 2,000 tiger-eyes, red; 3 masses of mat jewel stones, green; 3 ditto, gray; 3 ditto, mixed; 2 ditto, straw; 3 ditto, dark topaz. Have you samples representing the character of these items?

A. Yes, sir.

By Mr. COMSTOCK:

Q. Does this string of articles which I now show you represent the tiger-eyes?

A. Yes, sir.

(Samples offered in evidence; received, and marked "Exhibit 2.")

Q. Do these small articles which I now show you represent the masses of mat jewel stones of various colors?

A. Yes, sir.

(Samples offered in evidence; received, and marked "Exhibit 3.")

Q. Now, referring to your importation per "La Champagne," February 4, 1891, state whether these same articles accurately represent, irrespective of whether they were drawn from that importation or not, the articles described on the invoice as cat's-eyes, tiger's-eyes; masses of mat jewel stones, garnet, medium blue, and straw.

A. Yes; the samples that have been submitted represent the same thing.

(Witness withdrawn temporarily.)

ADOLPH KAHN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. With what house are you associated, Mr. Kahn?

A. H. Wolff & Co., 545 Broadway, this city.

8 Q. In what capacity are you with them?

A. Confidential clerk.

Q. Your services include a sort of general management of the details of the business, do they not?

A. Yes, sir.

A. Are you familiar with the merchandise that that house imports and deals in?

A. Yes, sir.

Q. Have you with you samples representing the wax beads which were included in your entries per "La Bretagne," April 4, 1893; "Elbe," August 3, 1893; "La Champagne," February 13, 1894; "Trave," February 12, 1894?

A. Yes, sir.

Q. Please produce them.

(Witness produces two bunches of beads.)

(Samples offered in evidence; received, and marked "Exhibit 4.")

Q. Mr. Kahn, state whether all the beads represented by these samples (Exhibit 4), which were included in the several entries I have enumerated to you, were described on the invoices by the name of wax beads, or whether they were described otherwise.

A. They were described some as wax beads and others just as beads; in the case of the French entries they were described as "perles."

Q. But these wax beads were the only beads there were on these invoices?

A. Yes, sir.

Q. Irrespective of how described?

A. Yes, sir.

Q. Were they imported in the condition in which they are shown in these samples (Exhibit 4); that is to say, already strung?

A. Yes, sir.

Q. Mr. Kahn, please examine Exhibits 2 and 3 in this case (Suit No. 2174, Morrison), and state whether or not, in the understanding of your trade, all of these articles which you have examined are beads.

By Mr. VAN RENSSELAER:

Q. Mr. Kahn, I understood you to say that you are confidential clerk of H. Wolff & Co.?

A. Yes, sir.

9 Q. Have you ever had any experience as a buyer of these goods?

A. I have bought some in the market; yes, sir.

Q. When did you buy such goods in the market?

A. When we were out of any of these goods I went into the market and bought them.

Q. When did you do that? How long ago?

A. I have been doing so for the last fifteen or sixteen years, off and on.

Q. Have you bought different quantities of beads in wholesale lots?

A. Yes, sir.

Q. From wholesale houses here in New York?
A. From importers here in New York.
Q. Have you ever sold these articles at wholesale?
A. Yes, sir.
Q. In wholesale quantities?
A. Yes, sir.

By Mr. COMSTOCK:

Q. (Question repeated.) Mr. Kahn, please examine Exhibits 2 and 3 in this case (Suit No. 2174—Morrison), and state whether or not in the understanding of your trade all of these articles which you have examined are beads.
A. They are.
Q. And what is the case as to Exhibit 4; are they also beads commercially?
A. Beads.
Q. And were all of them beads commercially prior to August 6, 1890, as well as since?
A. Yes, sir.
Q. Is it a fact that beads as known in commerce are not necessarily globular in shape?
A. Yes, sir.
Q. And with holes alongside of one another as in Exhibit 3?
A. Yes, sir.
Q. Referring particularly to the goods composing Exhibit 3, state what beads of that particular variety are known as besides beads, if they have any other name?
A. Jewels.
Q. Why do you understand that they were or are sometimes known as jewels?
A. They have got that name; they are used for trimming purposes to imitate precious stones.
Q. Are these articles, Exhibit 3, recognized in your trade as constituting imitations of precious stones?
A. Yes, sir.
Q. Were they so recognized as long ago as 1890 and theretofore?
A. Yes, sir.
Q. Have you ever seen the trimmings that are made embodying these things?
A. I have seen some; yes.
Q. Do you know how they are known?
A. I don't know.
Q. Don't know by what name they are known?
A. No.
Q. Referring to Exhibit 2, state what that represents, if you know; I don't mean as to its being a bead, but as to what it represents in any other way.
A. I have not dealt in that.
Q. Referring to Exhibit 4, state what those beads represent.
A. They represent pearls—imitation pearls.
Q. You don't mean that they represent imitation pearls, but real pearls?

A. They represent real pearls, not imitation.

Q. In using them they are employed singly as well as together, are they not?

A. Yes, sir.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Kahn, do you testify from memory that these articles that you have described as beads were some of them described as wax beads on the invoices?

A. Yes, sir; I looked at the invoices before I came down to-day.

Q. Now, as to those that you say were invoiced as "perles." Was that invoice in English or in French?

A. It was in French.

Q. Can you state, if you remember, what the designation in French was?

A. Perles.

Q. These articles, Exhibit 4, were they imported in the condition in which these samples appear here?

A. Yes, sir.

Q. In the same way?

A. Yes, sir.

11 Q. Have you ever personally bought at wholesale these articles represented by Exhibit 3?

A. Yes, sir.

Q. I understood you to say that they as well as all the other exhibits were commercially known as beads. That is true, is it not?

A. Yes, sir.

Q. Is that not their general name in trade?

A. Yes; that is their general name in trade.

Q. Have you ever heard them called jewels otherwise than occasionally, as it were?

A. I have heard them called jewels.

Q. But that isn't their regular trade name?

A. Well, no; they call them jewels and they call them beads.

Q. Aren't they generally called beads in the trade?

A. Yes, sir; they are called beads or jewels in the trade.

Q. Does your house, or did it in 1890, deal in articles that were commercially known as imitation jewels?

A. Only jewels like the samples you have in your hand (referring to Exhibit 3).

Q. Those are the only things you kept of that nature?

A. Those were the only things.

Redirect examination by Mr. COMSTOCK:

Q. When you testify that the little articles Exhibit 3 are the only articles that your house have dealt in which were known as imitation jewels, do you mean by that to qualify your testimony that the articles Exhibit 4 are in fact imitations of pearls and are dealt in by your house, or do you adhere to that testimony?

A. They are imitation of pearls.

Q. And you deal in them?

A. Yes, sir.

Q. And did at that time?
A. Yes, sir.

CHARLES H. BALDWIN recalled on behalf of the importer.

By Mr. COMSTOCK:

Q. Referring to Exhibit 2, state what that particular character and variety of beads represents.

A. Represents cat's-eye.

12 Q. That is the stone known as cat's-eye?

A. Yes.

Q. Not the eye of a cat, but the stone known as cat's-eye?
A. The stone known as cat's-eye.
Q. Are you familiar with the purpose for which this article is employed?
A. It is used in trimming.
Q. State whether in its use for that purpose it is intended to subserve the purpose of a cat's-eye or an imitation of one.
A. Just used in fancy trimming.
Q. For the purpose of imitating a cat's-eye stone?
A. Yes, sir.
Q. Referring to the articles Exhibit 3, state whether they have any other name in trade besides beads.
A. Jewels.
Q. They are known as jewels, are they?
A. Yes.
Q. Can you state to what that name has reference—why they are known as jewels?
A. They imitate jewels.
Q. They imitate real jewels?
A. Real stones.
Q. Real precious stones?
A. Real precious stones.
Q. What are they used for—I mean Exhibit 3?
A. They are used for dress trimmings.
Q. And what are such trimmings known as?
A. Jewel trimmings.
Q. Do you understand that they are so named, and that these articles are so used with the object of imitating or representing the various precious stones whose color they follow?
A. Yes, sir.
Q. Look at Exhibit 4 and state whether you are commercially familiar with that article.
A. No, sir; I am not.
Q. Have you never handled wax or pearl beads?
A. We handle pearl beads—wax pearl beads.
Q. Differing from these (Exhibit 4) perhaps in size?
A. Differing in shape.
Q. Mr. Baldwin, state now generally as to Exhibits 2 and 3 what single name, as used in trade and commerce at and prior to, we

13 will say, October, 1890, would have covered and described them.

A. Beads.
Q. They were all beads?
A. They were all beads.

Q. Are you personally a dealer or connected in business with a dealer in beads at wholesale?

A. We sell beads at wholesale.

Q. They are included among the things that you sell?

A. Yes, sir.

Q. Had you a commercial experience in the class of beads as understood in trade and commerce in this country among wholesale dealers at and prior to October, 1890?

A. Yes.

Q. Do you know how that term was used, and what it meant in trade?

A. Yes, sir.

Q. State whether or not that term as used in trade at that time would have covered and included Exhibit 4.

Mr. VAN RENSSELAER. Objected to, as the gentleman has said that he didn't deal in articles like Exhibit 4.

(Objection sustained.

Upon counsel for the importers insisting upon its admission under Rule XI of this court, it is so admitted.)

A. Yes, sir.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Baldwin, in what condition were these articles represented by Exhibit 2 imported by your house?

Mr. COMSTOCK. The importer concedes that they were imported upon strings, and that the claim that they were entitled to entry as beads, loose, threaded, or unstrung, is not insisted on.

Q. Mr. Baldwin, you are not a jeweler and never have been?

A. I have been in the jewelry business; yes, sir.

Q. What is the character, if you know, of the stone which is designated as cat's-eye?

A. It is a stone that resembles a cat's eye in the shading.

14 Q. Is it an opal or an agate, or what kind of stone, as far as you know?

A. It is a variegated color.

Q. Have you ever seen a cat's-eye stone of this peculiar reddish-brown color represented by Exhibit 2?

A. You mean in the genuine?

Q. Yes.

A. No, sir.

Q. Those articles look like brown beads with a light streak through the middle of them, do they not?

A. Yes, sir.

Q. That is about all they look like?

A. A very poor imitation of a cat's-eye.

Q. Isn't the imitation so poor that nobody excepting, perhaps, a man as intelligent as yourself would recognize them as imitation cat's-eyes?

Mr. COMSTOCK. Objected to as calling for a conclusion from a witness entirely within the proper functions of the court.

(Objection overruled. Mr. Comstock excepts.)

A. I think anybody that has seen a cat's-eye and saw that would know it is a very poor imitation.

Q. Have you ever heard them bought and sold as imitation cat's-eyes?

A. They are bought and sold as cat's-eye stones—cat's eye beads, at least.

Q. You therefore say you have heard them bought and sold as cat's-eye beads?

A. Yes, sir.

Q. You never have heard them designated in trade or bought and sold as imitation cat's-eye stones, have you?

(Objected to as irrelevant and immaterial; objection overruled; exception.)

A. I have never heard anything about that.

Q. As to Exhibit 3, Mr. Baldwin, these articles are bought and sold as beads, are they not?

A. Yes, sir.

Q. Have you ever known them to be bought and sold as jewels?

A. Well, in our business we class them as jeweled stones.

Q. You class them as jeweled stones?

A. What I mean, that is the term——

Q. You don't class them as beads at all; is that the understanding?

A. People call them beads and call them stones; I suppose both terms are appropriate.

Q. You don't deal at all in the jewel trimmings, to which you have referred, do you?

A. Yes, sir.

Q. Does your house deal in them?

A. Yes, sir.

By Mr. COMSTOCK:

Q. Mr. Baldwin, as a jeweler you have had experience with various precious stones, have you not?

A. Yes, sir.

Q. I want you to tell me whether it is a known practice in regard to precious stones to drill them so that they become a bead?

A. No, sir.

FRANK H. FOEPPEL, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What business are you in, Mr. Foeppel?

A. Importing business—millinery.

Q. Here in the city of New York?

A. Yes, sir.

Q. With what house?

A. D. W. Bedell, successor to John Thompson.

Q. Are beads included in the line of goods your house deals in or imports?

A. Yes, sir.

Q. How long a commercial experience at wholesale in the markets of this country have you personally had with beads?

A. Twelve years.

Q. And you have personally bought them and sold them in wholesale quantities on these markets during that time?

A. Yes, sir.

Q. Please examine the exhibits in this case, Nos. 2, 3, and 4, and point out anything that you find there which has not been included in the commercial meaning of the word "beads" at all the times within your knowledge.

16 By Mr. VAN RENSSELAER:

Q. Have you dealt in all those classes of articles?

A. We have dealt in all excepting Exhibit 2.

By Mr. COMSTOCK:

Q. (Question repeated.) Please examine the exhibits in this case, Nos. 2, 3, and 4, and point out anything that you find there which has not been included in the commercial meaning of the word "beads" at all the times within your knowledge.

Mr. VAN RENSSELAER. Objected to as regards Exhibit 2, in which the witness says he has not dealt.

(Objection sustained.

Counsel for the importers insists upon its admission under Rule XI of this court, and it is so admitted.)

A. I would consider them all beads.

Q. You having said in answer to the cross-question that you had not dealt in Exhibit 2, state whether you have dealt in articles resembling it in the general character, although not in the particular colors.

Mr. VAN RENSSELAER. Objected to as calling for testimony as to some article which is not in suit here.

(Objection overruled. Mr. Van Rensselaer excepts.)

A. We had some similar to it in a pin—bonnet pin and a hat pin.

Q. Now, state whether any of these articles that you have dealt in, Exhibits 3 and 4, have any other commercial name in addition to its name of beads, and if so, what it is?

A. Exhibit 3 are called imitation jewels.

Q. And Exhibit 4, have they any other name than beads?

A. Imitation pearls or wax beads.

Q. As to Exhibits 3 and 4, state, if you know, what feature it is about them that gives them their use and their desirability and their

17 value in trade and the uses they are put to.

A. Different colors to imitate the precious stones.

Q. It is a fact that they imitate precious stones, is it?

A. Yes, sir.

Q. To what use, if you know, are these articles, Exhibit 3, chiefly devoted?

A. Trimmings for dresses or hats.

Q. Do you deal in such trimmings?

A. Yes, sir.

Q. State if those trimmings are characterized by any particular name which implies the presence of articles like Exhibit 3 in them, and if so, what the name is.

A. Jeweled trimmings.

Cross-examination by Mr. VAN RENSSELAER:

Q. Are the little articles in the envelope, Exhibit 3, ever bought and sold in trade as jewels or imitation jewels?

A. Yes; they are bought and sold as imitation jewels.

Q. And not as beads at all?

A. Beads would certainly include these, too; beads would be the general name for all these items, Exhibits 2, 3, and 4.

Q. They are all beads?

A. They are all beads.

Q. And then, as a class or subclass of beads, you say Exhibits 3 and 4 are called jewels or imitation jewels?

A. Yes, sir.

Q. Please look at the little articles in the envelope there, Exhibit 3, and tell us, if you can, what jewels you think they imitate.

By Mr. COMSTOCK:

Q. Mr. Foeppel, have you any business familarity with the different real precious stones?

A. I have not.

Mr. COMSTOCK. I object to the direct question as one calling for testimony which this witness is not competent to give.

Mr. VAN RENSSELAER. I insist upon the question on the ground that the gentleman has brought out on the direct examination that these are imitations of precious stones.

(Objection overruled. Mr. Comstock excepts.)

18 By Mr. VAN RENSSELAER:

Q. (Question repeated.) Please look at the little articles in the envelope there, Exhibit 3, and tell us, if you can, what jewels you think they imitate.

A. My knowledge of precious stones is too limited to tell which stones they would imitate.

Q. Then you can't say that they imitate precious stones at all, can you?

A. I can answer that question as far as they are known commercially under the name of imitation jewels.

Q. Do you deal in articles exactly like or very nearly like Exhibit 4—these pearl beads?

A. Yes, sir.

Q. Have you ever known of them being bought and sold as imitation pearls?

A. Yes, sir.

Q. Is there not an article in your trade, and do you not deal in an article, which is specifically known as imitation pearls, and which is not that article.

A. No, sir.

HUGO HEUMANN, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. With what house are you associated, Mr. Heumann?

A. Samuel Schiff & Co.

Q. What place?

A. 670 Broadway.

Q. This city?
A. This city.
Q. Who are dealers in what?
A. Millinery ornaments, beads, and trimmings.
Q. Are you personally conversant, and have you had commercial dealings at wholesale in these classes of goods?
A. Yes.
Q. For how long a time?
A. Over seven years.
Q. Always in this country?
A. Yes, sir.
Q. Examine Exhibits 2, 3, and 4 and state whether you deal in articles identical with or substantially the same as each and every one of those.
A. We have dealt in Exhibits 3 and 4.
Q. Have you dealt in nothing at all resembling Exhibit 2?
A. Yes, sir; I have.
19 Q. In what respects resembling it?
A. In shape.
Q. Differing only in color?
A. In color.
Q. Now, state from your experience in articles of this class and in the other classes that you have testified about whether there is any article among these exhibits which would not have been covered by the term "beads" as used in the wholesale trade in this country at all the times during which you have been in the trade.
A. They all are known and dealt in as beads.
Q. If any one has any specific name to distinguish it from any sizes, shapes, and colors of beads, please state what such specific name is, keeping always within trade terminology.
A. Exhibit 3 are called jewels; Exhibit 4 are called wax beads, or Roman beads, or imitation pearls.
Q. In view of all these special names that you have given, does the use of them imply in a trade sense that the articles so specially named are any the less beads commercially?
A. It doesn't take anything away from their character as beads.
Q. They are all beads, no matter what else they may specially be?
A. Yes.
Q. Referring to Exhibit 3, which you have said are called jewels, state what their use is.
A. They used to be employed in the manufacture of trimmings or braids, and they are to represent jewels.
Q. What are such trimmings and braids specifically known as on account of the presence of these articles in them?
A. Jeweled braids or jeweled trimmings.
Q. State as to Exhibit 2, or the article differing only in color from it which you have traded in, and as to Exhibit 3 and as to Exhibit 4 what it is about them, if you know, that gives them their currency and desirability in trade.
A. So far as my knowledge goes, they are only employed in such a way as to give an imitation of some costly jewel.

Q. Calling your attention to the fact that the word "jewel" may mean not only a gem or precious stone, but perhaps a piece of jewelry, I ask you whether you mean that they are used to imitate a gem in the sense of a piece of jewelry or whether you mean a jewel in the sense of a stone.

A. Of a stone—single stone.

Q. Then I am correct in concluding from your testimony that all three of these exhibits (2, 3, and 4), according to your knowledge, find their use and value and desirability in the fact that they imitate precious stones?

A. My answer, as far as Exhibit 3 and Exhibit 4 goes, is unqualifiedly yes; but in regard to Exhibit 2 I may say that in this form and shape I have only seen these goods made of wood, ebony, horn, or of a character like that, and I have never seen them to resemble any smaragd and sapphire.

Q. You have no personal trade familiarity with real precious stones, have you, as a merchant?

A. No, sir.

Q. Do you mean to be understood as expressing any difference of opinion regarding Exhibit 2 from a witness who has testified here to-day that it was in fact an imitation cat's-eye, although a poor imitation?

A. I have never dealt in them; I have never seen them in my trade connections.

Q. Do you mean to be understood as expressing a difference in opinion from his statements that they were an imitation of cat's-eye.

Mr. VAN RENSSELAER. Objected to on the ground that the gentleman has not heard the testimony referred to. His answer is already explicit on the subject.

By the REFEREE:

Q. Did you hear the previous witness testify about their being cat's-eyes?

A. Yes.

Q. You heard what he said?

A. Yes, sir.

Q. Have you any opinion as to whether he was right or wrong about it?

A. I could not tell you; I don't know the bead called cat's-eye; I have never seen it or never heard of it in my experience.

21 Cross-examination by Mr. VAN RENSSELAER:

Q. You say that all of those exhibits with which you are familiar, Mr. Heumann, are commercially known as beads?

A. Yes, sir.

Q. Is the trade name or designation by which these little articles, Exhibit 3, are known, jewels?

A. Yes, sir.

Q. Is that the only name that you have heard applied to them in trade?

A. They call them imitation jewels; we classify them as beads.

Q. Then the designation "jewels" is a class of beads, as I understand it?

A. It is a certain class of beads.

Q. You say Exhibit 4 are known in trade as wax beads or Roman beads?

A. Yes, sir.

Q. Have you ever known them to be called in trade imitation pearls?
A. Yes.
Q. Is there not another class of articles dealt in in your trade as imitation pearls which are different from those altogether?
A. There is a similar article, but it is only pressed on one side, and is used to form the head of a pin.
Q. That is the only other kind of imitation pearls that you know of in your trade?
A. Yes; they are called pearl pins when they are mounted on the pin.
Q. What are they called, if anything, before they are mounted on the pins?
A. Pearls, half pearls, or three-quarter pearls.
Q. Are they not known as imitation pearls?
A. They are in fact an imitation, but you call for pearls, or half pearls, or three-quarter pearls.
Q. In trade they would be called pearls, half pearls, or three-quarter pearls?
A. Yes, sir.
Q. You said, I believe, that you were not familiar with real jewels or precious stones?
A. Yes, sir.
Q. You are not familiar with them?
A. I am not.
Q. Therefore you do not state any particular resemblance or imitation that there is in any of these articles to real stones, within your knowledge?
A. From general knowledge I know how a jewel of a certain description looks.
22 Q. Do you not mean to say merely that commonly and in trade they are known as jewels or imitation pearls?
A. That is what I mean to say.

Redirect examination by Mr. COMSTOCK:

Q. Do you mean to qualify your previous testimony that it is in fact the resemblance of these articles such as it is to different precious stones which gives them their use and value and desirability? Do you mean to qualify that testimony?
A. They are made to resemble—to imitate precious stones.
Q. Referring to Exhibit 4 and to your testimony about those articles known as pearls, or half pearls, or three-quarter pearls, which are used for pin heads, state whether or not those last articles are, so far as your senses enable you to discern, of the same materials and made up of the same imitation as Exhibit 4.
A. They are for the same purpose.
Q. You state that you have known these to be sold as imitation pearls, Exhibit 4. Is or is not that in fact an entirely usual name for them, or "pearls" without the word "imitation?"
A. In the millinery trade, in which I am most familiar, they are called wax beads or Roman beads; but they are called once in a while by people who make trimmings partly for hats or partly for dresses, and they ask for imitation pearls, because they use them for the purpose of making the impression on some piece of embroidery as if it was studded with a real pearl, and they call for the imitation pearl.

Q. And what they want is this Exhibit 4?
A. That is what they want.

Adjourned subject to fixing a date for further hearing.

23 Hearing resumed February 27, 1896.

Appearances: For the importers—Albert Comstock (of Comstock & Brown). For the collector and Government—James T. Van Rensselaer, Asst. U. S. attorney.

JOHN LAMONT, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business, Mr. Lamont?
A. Lapidary and importer of precious stones.
Q. Are you also a wholesale dealer of precious stones in this country?
A. Yes.
Q. And commercially familiar with the general class of precious stones handled in trade in their various conditions?
A. Yes, sir.
Q. State whether or not precious stones are dealt in with holes drilled through them as well as without.

By Mr. VAN RENSSELAER:

Q. How long have you been dealing in precious stones?
A. I have been in business for myself for eighteen years.
Q. Have you bought precious stones during that time as well as sold them?
A. Yes.
Q. Both?
A. Yes.
Q. Are you as a lapidary familiar with the cutting of precious stones?
A. I am a practical lapidary.

By Mr. COMSTOCK:

Q. (Question repeated.) State whether or not precious stones are dealt in with holes drilled through them as well as without.
A. They are.
Q. In the form such as beads?
A. Yes.
Q. And also what is called half drilled—with the hole half way through?

A. Yes.

24 Q. Now, state whether or not precious stones in these forms that I have described in my last few questions are included within the trade understanding of the term "precious stones."
A. They are.
Q. Examine the articles which I now show you, and tell us what they are.
A. That is a topaz (referring to one of the articles shown witness).

By Mr. VAN RENSSELAER:

Q. Do you deal in such articles?
A. Yes.

Q. Like these samples?

A. Yes.

The WITNESS. This is an amethyst [referring to another sample shown witness], and this a crystal [referring to a third]. This is known by three different names [referring to a fourth]—crocidolite, that designates the material, and then it is known as tiger-eye also. Crocidolite is the proper name of it, and then it is called again a cat's-eye, on account of having that streak through it.

By Mr. COMSTOCK:

Q. It is a stone of crocidolite, and a stone known as cat's-eye or tiger-eye?

A. As well as on account of the way it is cut.

Q. Are any or all of these four articles which you have named drilled wholly or in part?

A. All drilled wholly—drilled through.

Q. In their present form, do you testify that they are still things which in the trade would be known as precious stones?

A. Yes, sir.

Q. If a person should have come into your place of business at or prior to October, 1890, and asked you to show him all the amethysts that you had, would you have included such articles as the one of these which you have said is an amethyst?

A. Yes, sir.

Q. Is the last true as to cat's-eye, topaz, and crystal?

A. Yes, sir.

Q. And as to all of these stones, state what term or class as understood in the trade would cover them all in their present condition as you see them.

A. Precious stones; but they are designated by their forms, &c. If a man comes and asks for an amethyst, I should ask him what kind of an amethyst he wanted; if he said an amethyst ball I should produce what is known as a faceted amethyst ball with a hole drilled through. The crocidolite is a plain ball.

Q. The crocidolite is a plain ball as distinguished from a faceted ball?

A. Yes.

Q. What term would apply, for instance, to other forms in which amethysts are dealt?

A. They are dealt in cabachon.

Q. That is a form faceted on one side and curved on the other?

A. The cabachon means puffed out, rounded top.

Q. Without facets?

A. Without facets.

Q. But a flat back?

A. A flat back.

Q. Other forms are——

A. Are the faceted stones, cut after the style of a diamond; if they wanted a faceted ball or a plain ball, we know just what they mean.

Q. So all these various forms were included within the class of precious stones?

A. Yes, sir.

Q. To what purposes are articles like the four which you have named put?

A. Various uses; they are used for earrings occasionally, and they are now being used for chatelaines or queen chains; they join several of them together with a charm attached to the end.

Q. Jewelry purposes only?

A. Jewelry purposes only.

Q. They serve no utilitarian purpose as distinguished from ornament?

A. Not that I am aware of.

Q. State whether or not pearls are members of the commercial class of precious stones.

A. They are known as such.

Q. Regarded by commerce as included within the class?

A. Yes.

26 Q. And has that always been true?

A. Yes; to my knowledge.

Q. Are pearls dealt in drilled as well as undrilled?

A. They are.

Q. And when drilled are they devoted to ornamental or to utilitarian purposes?

A. For ornamental purposes.

Q. Parallel to the purposes which they subserve when undrilled?

A. Yes.

Mr. COMSTOCK. I offer in evidence these four stones, about which the witness has been testifying.

(Samples received and marked "Exhibit 5.")

Q. Examine Exhibit 2 in this case and state of what, if any, precious stones those are imitations.

A. Imitation of cat's-eyes or crocidolites.

Q. Examine Exhibit 3, if you please, and state the several stones those articles are imitations of.

A. This is an imitation of a garnet (referring to a dark red stone); that is an aqua marine (referring to a pale-blue article); that could be called an imitation moonstone (referring to a bluish stone); here is a topaz (referring to an amber-colored stone).

Q. By that you mean imitation topaz?

A. Yes. That comprises all the stones that are imitated by them.

Q. Examine Exhibit 4, if you please, and state what, if any, precious stones they imitate.

A. The pearl.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Lamont, is garnet a precious stone which admits of being drilled?

A. Yes, sir.

Q. A hole may be drilled through it?

A. Yes, sir.

Q. Is aqua marine a stone which admits of a hole being drilled through it?

A. Yes, sir.

Q. And a moonstone also?

A. Yes, sir.

Q. How is it as to topaz? Does a topaz admit of drilling?

A. Yes, sir.

27 Q. A diamond would not admit of a hole being drilled through it?

A. It is almost impossible to do it; I believe it has been done.

Q. Is not a diamond a stone with a comparatively easy cleavage so that it would be liable to split?

A. Not in drilling; not so much as a moonstone.

Q. Has the moonstone an easy cleavage?

A. Yes, sir; cleaves like isinglass sometimes.

Q. When a stone has an easy cleavage is it not a matter of extreme difficulty to drill a hole through?

A. That depends upon what direction you are drilling it.

Q. If the direction was in the plane of the cleavage I suppose it would be more difficult?

A. It would be more difficult.

Q. Have you in your experience seen all these stones which you have referred to, namely, the cat's-eye, the amethyst, the garnet, the aqua marine, the moonstone, and the topaz; have you seen them with holes drilled through them?

A. Yes, sir; other stones as well.

Q. And so you are not speaking of the genuine precious stones?

A. Yes, sir.

Q. I understand that these stones included in Exhibit 5 are all genuine stones?

A. Yes, sir.

Q. Mr. Lamont, is not the dealing in imitation precious stones a special department of the business relating to precious stones?

A. Not necessarily.

Q. Do you deal yourself in imitations of precious stones?

A. Imitations and real.

Q. Is that a part of your business?

A. A part of my business to cut them and deal in them.

Q. The imitation precious stones that you know in trade are designed to imitate as closely as possible and to serve in the place of the genuine precious stones, are they not?

A. Yes, sir.

Q. That is to say, the imitation diamonds, or imitation cat's-eyes, or amethysts, or garnets, aqua marines, moonstones, or topaz, in which you deal, would be imitations to be used in lieu of and for the

28 same purposes, for the same uses as ornaments, as the genuine stones, would they not?

A. Yes, sir.

Q. They are used as and for earrings, brooches, necklaces, finger rings, and other ornaments?

A. Yes, sir.

Q. Mr. Lamont, none of these exhibits which you have examined in this case, namely, Exhibit' 2, 3, and 4—none of these would be imitations of precious stones as you recognize them in your trade, would they?

A. Yes, sir.

Q. Would an imitation of a cat's-eye as inferior looking as that rep-

resented by Exhibit 2 be in your business and within your trade knowledge an imitation of the precious stone cat's-eye?

A. Yes, sir; I have seen them worse than that.

Q. The ornamental uses which you have described as those to which the precious stones are put are uses included within the term "jewelry," are they not?

A. Yes, sir.

Q. Now, none of these articles included in Exhibits 2, 3, and 4 could be used as articles of jewelry, could they?

A. The pearls could be used; they are used in the form in which they are there.

Q. The little articles represented by Exhibits 2 and 3 could not?

A. Unless they were mounted; they would not be recognized as jewelry until they are mounted.

Q. Are those of a character or quality sufficiently good as imitations to warrant their being mounted as jewelry?

A. I have seen them mounted.

Q. Articles of the grade and character of these?

A. Yes, sir.

Redirect-examination by Mr. COMSTOCK:

Q. Mr. Lamont, I call your attention to the fact that the provision of the tariff cited by the importer in this case provides for imitations of precious stones composed of paste or glass not exceeding one inch in diameter; state whether you are familiar in your trade with
29 imitation precious stones running up to anything like as large as one inch in dimensions.

A. Yes, sir.

Q. The finer class of imitation precious stones would be smaller?

A. Much smaller.

Q. Not only cheap and inferior, but they are as large as that, you say?

A. Amethysts are often as large as that, and so are crocidolites.

Q. Is one of the purposes for which real precious stones are used, according to your business knowledge and experience, the decorating of garments, especialy ladies' garments?

A. I don't know of any that is imported for that special purpose.

Q. Is that one of the uses to which precious stones are put?

A. They are put to that purpose sometimes; yes, if they can afford it.

By Mr. VAN RENSSELAER:

Q. Precious stones, within your knowledge, are not used for the purpose of being made up into trimmings, are they?

A. Not usually; no, sir.

Q. You have never known any to be so used?

A. Well, I have known of decorations being made for dresses of precious stones, real precious stones; of course they come high.

Q. Very rare?

A. Very rare.

By Mr. COMSTOCK:

Q. Imitation precious stones would be more habitually used for that purpose, would they not?

A. Yes, sir.

EDWARD STARKE, called as a witness on behalf of the importers, being duly sworn, testified as follows:

By Mr. COMSTOCK:

Q. What is your business, Mr. Starke?

A. Employed as salesman for Rudolph C. Hahn.

Q. And his business is what?

A. Importer of precious stones.

30 Q. Have you for some years dealt in precious stones at wholesale in the markets of this country?

A. Yes, sir.

Q. For how long?

A. Me, personally, or Mr. Hahn?

Q. You, personally.

A. I have been in the business eight years.

Q. Have you during that time had a general commercial knowledge in the wholesale markets of the term "precious stones" and its meaning?

A. Yes, sir.

Q. State whether the term as used and understood in the wholesale trade has included stones in any form than rough?

A. It includes cut stones.

Q. And cut into what forms that you think of?

A. Cut into balls and oval stones, and others that are drilled, and beads; those are some of the shapes; plain and faceted and cut into any number of shapes.

Q. And drilled and undrilled?

A. Yes, sir.

Q. And all these shapes might correctly be described as ornamental—stones used for the purposes of ornamentation and decoration?

A. In the jewelry line; used for ornamental work and decoration in the jewelry line.

Q. Examine the four articles constituting Exhibit 5 in this case, and state what they are, if you know.

A. The yellow one is a topaz; there is a white crystal [indicating]; the blue one is an amethyst; and this is a cat's-eye, an imitation cat's-eye [indicating].

Q. Are all of these, with the possible exception of the imitation cat's-eye, genuine precious stones?

A. Yes.

Q. If that were a real cat's-eye, would they be real precious stones?

A. Yes, sir.

Q. Are you sure it is not a real cat's-eye?

A. It is an imitation.

Q. In that condition, with the holes drilled through them, state whether they are not within the trade meaning of the term "precious stones."

A. They are.

Q. And these understandings that you have testified to, did
31 they equally exist in the wholesale trade of this country at and before 1890, just the same as they are now?

A. Certainly.

Q. Been no change?

A. No, sir.

Q. Examine Exhibit 2 and state what those articles are which comprise it.

A. Those are imitation cat's-eyes.

Q. Examine Exhibit 3 and state what, if any, precious stones those articles imitate.

A. That is an imitation topaz [referring to amber-colored article]; that is an imitation aqua marine [referring to a pale blue article]; that is an imitation garnet [referring to a dark red stone]; that is all.

Q. Aren't these amber-colored ones topaz?

A. That looks like topaz.

Q. That comprises them all, does it?

A. Yes, sir.

Q. Examine Exhibit 4 and state what, if any, precious stone these articles represent or imitate.

A. Well, if the pearl is considered a precious stone, why this is an imitation of a precious stone, the pearl.

Q. Is it your understanding that according to the use of terms in your trade pearls are included within the meaning of the term "precious stones?"

A. They are included in the meaning of precious stones, yes. The reason I say if the pearl is not a stone——

Q. Technically you doubt if it is a precious stone?

A. Yes.

Q. But in the trade parlance it is regarded as one?

A. Yes, sir.

Q. And always has been?

A. Yes, sir.

Q. Does your house deal in imitation precious stones as distinguished from genuine ones?

A. Somewhat.

Cross-examination by Mr. VAN RENSSELAER:

Q. Mr. Starke, should you consider any of these things, anything shown you in Exhibits 2 and 3—should you consider any of these
32 of the character and nature of what is commercially recognized as imitation precious stones?

A. Yes, sir.

Q. Have you ever dealt in them commercially of this low grade of quality and character?

A. Well, no, sir; that is a little out of our line. We have had very small quantities, but only as samples; that is all.

Q. You have dealt in imitation precious stones that were used in the jewelry line?

A. Somewhat.

Q. That is, as earrings and brooches, necklaces, finger rings, &c.?

A. Yes, sir.

Q. You have never known of precious stones or imitation precious stones within your knowledge being used for trimmings and such like, and decoration?

A. Well, no, sir; not in our concern. They are used rarely, but we have never had any.

Q. Are you quite positive, Mr. Starke, that pearls, real pearls, are included among precious stones at all?

A. Commercially they are; yes, sir. They are dealt in by all dealers in precious stones.

Q. Would they be included within the general designation precious stones commercially? A pearl is not, as a matter of fact, a stone.

Mr. COMSTOCK. I object to that because it tends to mislead the mind of the witness.

(Objection overruled. Mr. Comstock excepts.)

A. Yes, sir.

(Importers rest.)

Adjourned without fixing date.

33 Hearing resumed March 26, 1896.

Appearances: For the importers, Albert Comstock (of Comstock & Brown); for the collector and Government, James T. Van Rensselaer, asst. U. S. attorney.

EDWARD G. VEITH, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. Mr. Veith, what is your business, and with whom are you associated?

A. My firm is A. & H. Veith.

Q. Where are they?

A. 719 Broadway, city of New York.

Q. You are a member of the firm?

A. Yes, sir.

Q. How long have you been a member of the firm?

A. About eight years—nine years.

Q. What is the general business of the house of Veith & Co.?

A. Millinery goods, beads, &c.

Q. Will you please look at these articles contained in these envelopes and state whether you have personally dealt at wholesale in these articles, or any of them, on and prior to October 1, 1890?

A. This we have (referring to Exhibit 2); same with this (referring to Exhibit 3); also Exhibit 4.

Q. Now, please look at Exhibit 2 and state, if you please, by what name those articles were dealt in commercially at that same time.

A. This had no commercial name with us at the time it was imported; it was a novelty; it was an imitation of cat's-eye. We have had the real cat's-eyes without the holes, which were very expensive, and these (Exhibit 2) we had made in one part of the country; they are made in France and in Germany as imitations for real cat's-eyes.

34 Q. Were they included within the commercial class of beads or not?

A. Some did and some didn't.

Q. What was the general practice in the trade, so far as you knew?

A. It was only an article lasting for one season, this particular thing, and we called it imitation cat's-eye. We used it in making ornaments, just like we used rhinestones, paste, and glass like that.

Q. Now, please look at the articles in Exhibit 3.

A. Those were called, and are called to-day yet, jewels.

Q. Did they come within the class on and prior to October 1, 1890, and were they known in trade as beads?

A. These have always been under the name of jewels.

Q. Did they come within the general class of beads, if there was such a class?

A. It has always been put in our stock of that class of goods, but we have always called them jewels.

Q. By "that class of goods" do you mean beads?

A. Everything we carry in this class of goods goes in our bead department, like the rhinestones and all these things. The man who has charge of the bead department has charge of these goods, but we call them jewels, and have called them at that time jewels.

Q. Please look at sample Exhibit 4 and state by what name that was commercially known.

A. This was always called pearl beads.

Q. Did you know at that time in your trade a designation of wax beads?

A. Well, when the pearl beads first came out they were only made in France by a good manufacturer, who made them in beads used for necklaces for imitations of the real article, and they have always been called Topart pearls; that is the manufacturer's name.

Q. I ask you whether, at that time, there was an article known commercially as wax beads in your trade?

A. After they were made—they were made in Germany, and they didn't know what to call them, and they called them wax beads because they were filled with wax.

Q. Have you or have you not known them commercially in this country as wax beads?

A. Yes; some people called them wax beads and some called them Roman beads.

Q. Now, Mr. Veith, in October, 1890, and before that date, did you know in trade a class of articles known and recognized as imitation precious stones unset?

A. Yes.

Q. Did your house deal in them?

A. Well, we have always imported them for manufacturing purposes.

Q. Will you please look at the articles which I now show you, examine them carefully, and state whether these articles fairly represent the articles which you have known during that time as imitation precious stones unset?

A. Yes, sir; there is a set one in there.

Q. With the exception of that they appear to be unset?

A. Yes; you might find that there are some in here like they were in the envelope (referring to Exhibit 3), where they have holes in. They are used in the same way.

(Samples offered in evidence received and marked "Govt's. Sample Exhibit A.")

Q. For what purpose do you use these articles which you have designated as imitation precious stones unset in your business?

A. For making ornaments, imitation jewelry, and things of that kind.

Q. Do you set them; is that part of your business?

A. Yes.

Q. Do you know for what purpose they are used when they are set?

A. According to the fashion and according to how they are set. You can set them in real gold and you can set them in imitation for hat ornaments and things of that kind.

36 Q. I see among these articles two specimens, one of which I show you; is that set?

A. That is set; yes, sir.

Q. Referring again particularly to Exhibits 2, 3, and 4, have those been commercially known during your trade experience as imitations of precious stones unset?

A. Yes; they must have been called unset because they are loose.

Q. Have you known them during your trade experience as imitation precious stones unset?

A. Yes.

Q. Do you make that answer with reference to Exhibit 2; is that the understanding?

Mr. COMSTOCK. I object to further attempts on the part of counsel to procure a modification of his own witness' answer, which has now been twice given.

(Objection overruled. Mr. Comstock excepts.)

A. When we imported them to sell we imported them—we understood them that way; that is the only time we imported them; we imported them for a jewelry house on the Lane; never carried them in stock ourselves.

Q. Do you mean to be so understood with regard to Exhibit 3? Have you known those in trade as imitation precious stones?

A. We called them imitation jewels, which I suppose is the same thing; we have always known them under that name.

Q. Have you ever known them under the commercial name imitations of precious stones?

(Same objection, same ruling, and exception.)

A. We have always known them as jewels—imitation; of course they are not real; we call them imitation jewels.

Q. Mr. Veith, did you not see Mr. John T. Linnen, a representative of this office, who called upon you at your store recently in reference to these articles in this suit?

A. Yes.

37 Q. Did you not say to Mr. John T. Linnen when you saw him in relation to these articles that these exhibits in this case, Exhibits 2, 3, and 4, were not commercially imitations of precious stones?

Mr. COMSTOCK. Objected to unless counsel pleads surprise by the examination of his witness.

Mr. VAN RENSSELAER. I plead surprise.

A. I don't remember exactly what I said to Mr. Linnen; I didn't know Mr. Linnen; and if any one would come in with a sample and show it to me, that example Exhibit 4, and ask, Have you got any of these beads? I would answer him, if I had them in stock, Yes. If he would

come in and ask me, Have you got any of these jewels? when I saw the sample I would send the boy to get me some of these goods; we would call them just as the man did; we wouldn't ask him what they were, because they are often known by a dozen different names.

Q. And you say that you did not say to Mr. Linnen, the gentleman whom you recognized here to-day, that none of these exhibits, 2, 3, and 4, were commercially known as imitation precious stones?

A. I don't believe that I said that about No. 4, because I think I must have told him that we called them pearl or wax beads. About the others, I don't know as to the numbers. And about these jewels, these cat's-eyes [referring to Exhibit 2], I don't remember exactly what I did tell him; but the others [referring to Exhibit 3], I am sure I told him they were jewels; I couldn't have told him anything else, because they are sold under that name to-day yet.

Q. Did you not say to Mr. Linnen at the same time that the imitations of precious stones as known in trade did not have holes in them?

A. I don't believe I showed him the imitation precious stones without holes at the time; I might have showed him a few mounted goods.

Q. Mr. Veith, in October, 1890, and shortly before that time, did you deal in an article or articles that were known in trade as imitation pearls?

A. Well, in our business we never call anything imitation; at
38 the same time they are imitations of the real pearls or diamonds or rubies or sapphires; we always call them by the real name, even if they are imitations.

Q. Do you mean to say you do not deal in imitation pearls?

A. I would say that we deal in pearls.

Q. You do not mean in real pearls?

A. No.

Q. Are those pearls that you say you have dealt in represented by these larger white articles which are included in this "Govt.'s Sample Ex. A.?"

A. Yes; we have dealt in all sizes of these goods.

Q. And do these represent the goods that you have dealt in as imitation pearls?

A. These and others, of which there are no samples here.

Q. How did they differ from these?

A. Some of them had holes in, going through this way from side to side.

Q. Do you know anything about what these pearls, we will call them, in Exhibit A are made of—that is, just whether you know?

A. Yes.

Q. What are they made of?

A. They are made of a composition and filled with wax.

Q. These that you see before you?

A. Yes.

Q. Is there any filling in those at all?

A. Yes; that is what we call wax, but it is really a fish scale melted.

Q. Did you not say to Mr. John T. Linnen, at the same interview, that the article Exhibit 4 was not commercially known as imitation pearls?

A. As I said before, we call them pearl beads or pearls.

Q. And you will not say whether or not you said to Mr. Linnen that they were not commercially known as imitation pearls?

A. Yes. This is the package Mr. Linnen showed me at the time.
Q. Yes.
A. We call them imitation pearls according to quality, very often, too; certain qualities we can only sell to the jewelry trade for imitation pearl necklaces and things of that kind.

Cross-examination by Mr. COMSTOCK:

Q. Now, the articles composing the three exhibits, 2, 3, and 4—that is, the cat's-eyes, the mat jewels, and the pearls—those would all be
39 recognized by your trade under the term imitation precious stones?
A. Yes.
Q. You don't regard any of them as real precious stones, but you know them to be imitations?
A. Yes.
Q. And the articles in the envelope marked "Exhibit A," those are also more usually known as jewels in your trade, are they not?
A. Yes.
Q. The ordinary term used for all these things is the one word "jewels?"
A. Yes.
Q. You testified that one of the articles in Exhibit A, which counsel for the Government selected and showed you, illustrated the way those things were set; tell me how they were set when they have two little holes through them, like Exhibits 2, 3, and 4?
A. Same way; or with clamps which cover the holes.
Q. The holes render them also useful for other kinds of setting?
A. Yes, sir.

By Mr. VAN RENSSELAER:

Q. Do you testify here that you have ever seen any articles like these in Exhibit 3 set?
A. Yes, sir; set them every day.

HERMAN SCHMALHAUSEN, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, Mr. Schmalhausen?
A. I import beads.
Q. Where is your place of business?
A. 43 Great Jones street.
Q. Are you alone or with a firm?
A. Alone.
Q. How long have you been in that business?
A. I have been established myself 33 years.
Q. In New York during that whole time?
A. In New York.
Q. Did you in October, 1890, and for some little time before
40 that, buy and sell, or either one of them, at wholesale, in the markets of this country, the beads in which you said you dealt?
A. Yes, sir.
Q. Please look at these exhibits in this case, Exhibits 2, 3, and 4, and

say whether at that time—that is, in October, 1890, and shortly before that—you dealt in those articles, or any of them?

A. I have not sold Exhibit 2; I really couldn't state exactly whether I did at that time deal in Exhibit 3; I dealt in Exhibit 4.

Q. Were or were not these articles, Exhibit 4, included within the class of articles that you have said you have dealt in as beads?

A. No. 4 was.

Q. By what particular name or designation was No. 4 known?

A. No. 4 is known as wax beads, or pearl beads.

Q. At that same time did you know a class of articles, commercially, as imitations of precious stones?

A. Yes, sir.

Q. Did Exhibit 4 belong to that class, commercially?

A. No, sir.

Q. What were those articles that were known in trade as imitation precious stones at that time?

A. Well, they were imitations of those stones made of paste and used for setting in jewelry.

Q. Will you please look at the articles in Exhibit A, and state whether those, or any of them, represent such imitation precious stones as you have described?

A. They are; a good many of them; they are imitations of precious stones, as I understand it; as I have sold them.

Q. Will you please state, if you know, what precious stones they imitate?

A. There is a green one, that we would call an emerald; these we would call rubies [referring to reddish stones]; these are amethysts [referring to heliotrope-colored stone]; diamonds [referring to colorless stones]; topaz [referring to amber-colored stone]; sapphire [referring to blue one].

Q. Were the imitation precious stones that you are familiar with cut, or apparently cut, as indicated by the articles in Exhibit A?

41 A. Yes; they were cut; or at least they appeared cut; some pressed, faceted.

Q. Was that universally or generally true within your knowledge as to those imitation precious stones that they appeared to be cut or faceted?

A. Yes, sir.

Q. Did you ever know them to have holes in them or through them?

A. No.

Cross-examination by Mr. COMSTOCK:

Q. Mr. Schmalhausen, the usual name used in the trade for these imitation stones that you have been looking at and which you say you dealt in was jewels, wasn't it [referring to Exhibit A]?

A. No; not as I understand it; jewels had holes in them to sew them on.

Q. You know, do you not, that Exhibit 4, about which you testified here, is an imitation of a pearl?

A. Yes.

Q. And that is its purpose and use when it is put to use, isn't it, to bear the imitation of a pearl?

A. Yes, sir.

Q. And as to Exhibit 3, you are familiar with these articles in trade, are you not?

A. I am now; I said I didn't remember the year when I commenced to deal in them; it must have been about 1890, but I am not sure about that.

Q. You know that these articles in Exhibit 3 are also intended to imitate the appearance and color of different precious stones, don't you?

A. Yes, sir.

Q. With the exception of being drilled or having holes in them they are practically the same sort of thing as Exhibit A in the nature of the imitation?

A. I should think so; yes.

Q. You said that all the articles which you had dealt in under the name of imitation precious stones were cut or appeared to be cut. Was that true of the articles included in Exhibit A, which were imitations of half pearls, or were they only pressed dome shaped? Those don't

42 appear to be faceted or cut, but merely pressed dome shaped.

A. No; they don't appear cut.

Q. But do appear to be pressed in a dome shape?

A. Yes.

LOUIS SCHLOSS, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, please, Mr. Schloss?

A. I am in the fancy goods business.

Q. With whom?

A. A. Steinhardt & Bro.

Q. 452 Broadway, New York?

A. Yes, sir.

Q. What is the nature of the business of that house?

A. We have five different departments.

Q. Which one are you in?

A. I am in the fancy goods department—articles of fashion.

Q. How long have you been with them?

A. Since 1888.

Q. Have you been a buyer of the goods dealt in by the house, or seller at wholesale, or both?

A. I bought the goods from samples submitted from the other side.

Q. Did you sell the goods?

A. I also sold.

Q. At wholesale?

A. Yes, sir.

Q. Have you, then, in your department of the business a general class of merchandise under the general name or designation of beads?

A. Yes, sir.

Q. Have you dealt in those at wholesale?

A. Yes.

Q. Will you please look at these samples, Exhibits 2, 3, and 4, in this case, and say whether you have dealt in them or some of them?

A. Exhibit 2, not; not in Exhibit 3; I have dealt in Exhibit 4.

Q. Were these articles represented by Exhibit 4 included or not within the general class of beads?

A. Exhibit 4 is what we call beads.

Q. Has that any particular name?

A. Yes; we call them wax beads.

43 Cross-examination by Mr. COMSTOCK:

Q. Now, Exhibit 4, what are those meant to imitate, if you know?

A. They are meant to imitate pearls—that is, we import them mostly to be used on necklaces, as necklaces.

Q. They are bought and sold in the trade as imitations of pearls, aren't they?

A. Yes, sir.

MAX HERTZ, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business, Mr. Hertz?

A. I am buyer in the jewelry department of R. H. Macy & Co.

Q. Here in New York City?

A. Here in New York City.

Q. How long have you been in that department?

A. I have been there nearly a year.

Q. Where were you in business before that time?

A. Before that I was in the retail dry goods business and in the importing business.

Q. Had you had no experience in the jewelry line of business before one year ago?

A. I had as far as imported goods went, and in the retail dry goods business I had experience also; I mentioned that I was in the retail dry goods business before that.

Q. Did you deal in jewelry, or jewelry of any kind?

A. We dealt in some jewelry—wares, and goods of that description.

Q. Please look at Exhibit 4 in this case and say whether before October, 1890, you had dealt in that article.

A. I had, sir.

Q. Before October, 1890?

A. Yes, sir.

Q. Did you buy it or sell it at wholesale in this country, or both, at that time?

A. At that time I was selling—that is, before that time I was selling, too.

Q. Selling at wholesale?

A. Selling at wholesale.

44 Q. Will you state by what name that article was known in trade and commerce of this country at that time?

A. Wax beads.

Q. In October, 1890, and shortly before that time, were you dealing in an article commercially known and recognized as imitations of precious stones?

A. I was not.

Q. Were you at that time dealing in an article commercially known as imitation pearls?

A. Not commercially known as imitation pearls; no, sir.

Cross-examination by Mr. COMSTOCK:

Q. What do you mean, Mr. Hertz, by your last answer, "Not commercially known as imitation pearls?"

A. I don't know of anything that I dealt in that they called imitation pearls.

Q. Exhibit 4 is in fact meant to imitate pearls, is it not?

A. I hardly think so.

Q. What do you think it is meant to imitate?

A. I don't know whether it is an imitation at all. Is it?

Q. Did you ever hear articles like Exhibit 4 spoken of as pearl beads in the trade?

A. Yes, sir.

Q. That name belonged to them just as much as the name "wax beads" in the trade?

A. Well, I naturally would think wax beads would be the correct thing for them, because that is what they are.

Q. But you know they were called pearl beads as well as wax beads in the trade?

A. Perhaps some people would call them that way.

JOSEPH WILCOX, called as a witness on behalf of the collector and Government, being duly sworn, testified as follows:

By Mr. VAN RENSSELAER:

Q. What is your business and with whom, Mr. Wilcox?

A. I am employed as a buyer by R. H. Macy & Co.

45 Q. Here in New York City?

A. Yes.

Q. How long have you been in that capacity?

A. Since 1879.

Q. What has been your department in the business?

A. It is known as the notion department.

Q. In that department, did you, in October, 1890, and for some time before that date, know an article commercially known and recognized as beads?

A. Yes, sir.

Q. Did you buy or sell those at wholesale or both?

A. I bought them at wholesale, and sold at retail.

Q. Please look at the samples in this case, Exhibits 2, 3, and 4, and say if you have dealt in these articles, or any of them.

A. Exhibit 2 we have not; Exhibit 3 we have; Exhibit 4 we have not.

Q. Will you state whether the articles represented by Exhibit 3 that you have dealt in were or were not included within the general commercial class of beads?

A. They were.

Q. At that same time did you deal in a class of articles commercially known as imitation precious stones?

A. No, sir.

Cross-examination by Mr. COMSTOCK:

Q. There was no such term as the one last suggested by counsel for the Government in your retail business, was there, Mr. Wilcox?

A. No, sir.

Q. You know the term "jewels" as applied to certain articles in your trade, do you not?

A. Yes.

Q. Did you know it as a term in the wholesale trade when you went to buy goods?

A. Yes, sir.

Q. Would that include Exhibit 3?

A. Yes.

Adjourned to March 31, 1896, 11 a. m.

(Government rests—testimony closed.)

Dated May 19, 1896.

46 MORRISON & SON } No. 2174.
vs.
UNITED STATES. }

WOLFF & CO. } No. 2182.
vs.
UNITED STATES. }

WHEELER, *J.:*

The tariff act of 1890, by paragraph 108, provides for a duty of 60 per cent on "thin blown glass * * * and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for;" by paragraph 445, for a duty of 10 per cent on "glass beads, loose, unthreaded, or unstrung;" and by paragraph 454, for a duty of 10 per cent on "imitations of precious stones, composed of paste or glass, not exceeding one inch in dimensions, not set." There is no mention of beads strung. These importations are of variegated glass beads, strung; similar glass ornaments without holes for stringing; black glass beads, sometimes called nailheads, unstrung; and hollow glass beads with wax inserted, giving an appearance like pearl, strung. They have all been classified as manufactures of glass, under paragraph 108, against protests referring to paragraphs 445 and 454. The classification of the black glass beads, unstrung, is, upon the evidence, conceded to be erroneous. Beads unstrung are impliedly beads capable of being strung; and the ornaments without holes for stringing are not such. The
47 variegated beads strung are manufactures of glass, and, as they were not specially provided for, were properly classified. The wax beads, although they may be imitations of pearls as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes the imitation. And imitations of precious stones, unset, are impliedly imitations capable of being set, which these beads are not.

Decision of General Appraisers reversed as to black glass beads, and affirmed as to the residue.

Comstock & Brown for plaintiffs.
James T. Van Rensselaer, assistant U. S. attorney, for United States.

At a stated term of the United States circuit court for the southern district of New York, held at the court rooms in the post-office building in New York City, on the 22d day of December, 1896.

Present: Hon. Hoyt H. Wheeler, judge.

E. A. MORRISON & SONS, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2174.

The above cause coming on for hearing and determination before this court on the application of the above-named importers for a review of the questions of law and fact involved in the decision of the Board
48 of United States General Appraisers herein, on the return of the said board of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon, and on the return of the evidence taken before the Hon. George H. Sharpe, referee, herein;

Now, after hearing Albert Comstock, esq., of counsel for the said importers, and James T. Van Rensselaer, esq., assistant United States attorney, on behalf of the United States, it is

Ordered, adjudged, and decreed that in the proceedings before the Board of General Appraisers there was error in regard to certain black glass nail-head beads, and that their decision herein as to said articles be, and the same is hereby, reversed; and it is further

Ordered, adjudged, and decreed that the said black glass nail-head beads were properly dutiable at only 10 per cent ad valorem under paragraph 445, tariff act of October 1, 1890, as glass beads, loose, unthreaded, or unstrung; and it is further

Ordered, adjudged, and decreed that as to all the remaining merchandise involved in this proceeding there was no error in the proceedings before the Board of General Appraisers, and that their decision herein, except as aforesaid, is hereby affirmed.

(Sgd.) HOYT H. WHEELER,
U. S. Judge.

Assented to as to form.
(Sgd.) WALLACE MACFARLANE,
U. S. Attorney.

49 United States circuit court of appeals for the second circuit.

EDWARD A. MORRISON AND EDWARD MORRISON, JR., trading as E. A. Morrison & Son, in the matter of their importations by "La Champagne," February 4, 1891, et al., appellants,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } No. 2174.

Assignment of errors.

The above-named appellants hereby assign error to the decision and judgment of the circuit court of the United States for the southern district of New York, herein, in the following particulars:

First. In that the said court ordered, adjudged, and decreed that, except as to certain nail-head beads, the decision of the Board of United States General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that paragraph 108, act of October 1, 1890, covered and provided for the merchandise in question, excepting the aforementioned nail-head beads, and also excepting certain masses of jewel stones as to which the decision of the Board of General Appraisers was in the importers' favor.

Third. In that the said court did not order, adjudge, and decree
50 that the provisions for imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, in paragraph 454 of the said act covered and provided for all of said merchandise with the two exceptions specified in the second assignment of error.

Fourth. In that the said court did not order, adjudge, and decree that, except as to the said masses of jewel stones, the decision of the said Board of General Appraisers should be in all things reversed.

Dated New York, January 6, 1897.

COMSTOCK & BROWN,
Attorneys for Importers, Appellants, 56 Pine St., N. Y. City.

United States circuit court of appeals for the second circuit.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2174.

It is hereby stipulated by and between the counsel for the respective parties to this action, that all the requirements of law as to protest, appeal to the U. S. circuit court, and appeal to this court have been duly and properly complied with herein, and that of the record and appeal to this court the following portions only shall be printed, viz:

51 The caption and Schedules A and B of the original petition, all of the collector's letter of August 10, 1891, not included within brackets, the protest of the appellants, the letter of the assistant appraiser of May 29, 1891, the decision of the general appraisers, the referee's report of the evidence taken before him, commencing with the page numbered 1 thereof and excluding all matter included within brackets, the

opinion of the circuit judge, the decree of the circuit court, the assignment of errors, and this stipulation, and that no endorsement of or on any paper shall be printed.

And it is further stipulated that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act as manufactures of glass not specially provided for.

Dated New York, March 18, 1897.

WALLACE MACFARLANE,
U. S. Attorney, for the Appellee.
COMSTOCK & BROWN,
For Appellants.

Ordered accordingly.
N. Y., March 20, 1897.

E. H. LACOMBE,
U. S. Circuit Judge.

52 United States circuit court of appeals for the second circuit. Nos. 54 and 55. October term, 1897.

Submitted December 17, 1897. Decided January 7, 1898.

E. A. MORRISON & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2174.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2182.

Appeals from the circuit court of the United States for the southern district of New York. Before Judges Lacombe and Shipman.

SHIPMAN, circuit judge.

In the year 1891 E. A. Morrison & Son imported into the port of New York two invoices of glass strung beads not exceeding one inch in dimensions, of two different kinds. One kind consisted of small brown beads, which were a very poor imitation of the precious stone known as "cats eye," which were used principally in the millinery trade for trimming, or for trimming ladies' garments, and were popularly styled "jewels" or "jewel stones." The second kind consisted of larger beads than those of the first class, which were also strung and were imitations of precious stones, and did not exceed one inch in dimensions, and were used for trimming and were also called "jewels."

53 In 1893 and 1894 H. Wolff & Company imported into the port of New York sundry invoices of glass strung beads, not exceeding one inch in dimensions, which were imitation pearl beads and

were called by that name, or were called wax beads, or Roman beads, and were used for necklaces or for trimming. All these articles have been long commercially known as beads. The collector assessed a duty of sixty per cent ad valorem upon all of these goods under paragraph 108 of the tariff act of 1890, which was as follows: "Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importers protested that the goods were dutiable under paragraph 454 of the same act, which imposed a duty of ten per cent ad valorem upon "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set." The Board of General Appraisers sustained the collector, and the circuit court affirmed the decision of the board upon the articles now in question, whereupon the importers appealed to this court. The cases were tried together upon substantially the same record.

"Glass beads, loose, unthreaded or unstrung," are dutiable at ten per cent ad valorem under paragraph 445 of the act of 1890. There is no duty specifically placed upon glass strung beads, and it is conceded that the merchandise in question was excluded from classification under paragraph 445, and that unless it was dutiable under paragraph 454 it was properly classified by the collector under paragraph 108 as manufactures of glass not specially provided for.

The articles were, in both popular and in commercial language, beads. The two Morrison importations, which were used for trimming, were also called, apparently for convenience sake, "jewels," but this subname has no bearing upon the classification for tariff purposes. The
54 term "imitations of precious stones" is not a commercial term and has no especial commercial meaning. All these articles were, in fact, imitations of precious stones, and are known to be such by the people who deal in them. The term "imitations of precious stones, unset," implies that there were imitations which were set; that is, made into or arranged as ornaments or imitation jewelry. A natural suggestion is that the two Morrison importations were to be exclusively used for trimming ladies' hats or apparel and were not to be set into ornaments for the person, but there can be no practical tariff distinction between imitations of precious stones made of glass or paste, unset, which are to be set into articles of jewelry and those imitations which are to be used as ornaments upon ladies' hats or apparel.

Inasmuch as the only glass beads which are named in the tariff act are unstrung beads, these strung beads are not classified by name, and their position for tariff purposes must be within some paragraph of general description. The only two paragraphs that can be discovered which describe them are Nos. 454 and 108. They are imitations of precious stones, composed of glass or paste, of the designated size, and are unset, and they are manufactures of glass, and if not specially provided for must fall into the general receptacle for glass articles which have escaped other classification. But adequate provision seems to have been made for them by the terms of paragraph 454.

The decision of the circuit court, so far as it related to the articles in question, is reversed.

Albert Comstock, for the appellants.

James T. Van Rensselaer, assistant United States attorney, for the appellee.

55 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court rooms, in the city of New York, on the 19th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The honorables E. Henry Lacombe, Nathaniel Shipman, circuit judges.

E. A. MORRISON & SON, APPELLANTS,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. 2174.

The appeal from the decision of the circuit court of the United States for the southern district of New York herein made on the 9th day of December, 1896, having come on to be heard, and due deliberation having been had thereon: Now, on motion of Albert Comstock, esq., of counsel for the appellants, it is

Ordered, that the decision aforesaid be and the same is hereby reversed, as far as the same affirmed the decision of the Board of U. S. General Appraisers, and that the merchandise which is the subject of appeal to this court is properly dutiable at 10% ad val. under par. 454, tariff act of October 1, 1890, as imitations of precious stones; and it is further

Ordered, that a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to proceed in accordance with the opinion of this court.

Assented to as to form.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Appellee.

56 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 55, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of E. A. Morrison & Son, appellants, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the said United States the one hundred and twenty-second.

[SEAL.] WM. PARKIN, *Clerk.*

57 (Indorsed:) Case No. 16869. U. S. C. C. of appeals, 2nd circuit. Term No., 294. The United States, petitioner, vs. E. A. Morrison & Son. Exhibit to petition for writ of certiorari. Filed May 5, 1898.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which E. A. Morrison & Son are appellants and the United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
59 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

60 (Indorsed:) Supreme Court of the United States. No. 656, October term, 1897. The United States vs. E. A. Morrison & Son. Writ of certiorari.

61 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLEE,
vs.
E. A. MORRISON & SON, APPELLANTS. } No. 656.

Stipulation.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the United States circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, may be treated as the return to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.

ALBERT COMSTOCK,
Counsel for Respondent.

(Endorsed:) Morrison & Son vs. U. S. Stipulation as to writ of certiorari. United States circuit court of appeals, second circuit. Filed June 3, 1898. William Parkin, clerk.

62 *To the honorable the Supreme Court of the United States:*

The record and all proceedings in the cause whereof mention is within made, having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy

of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

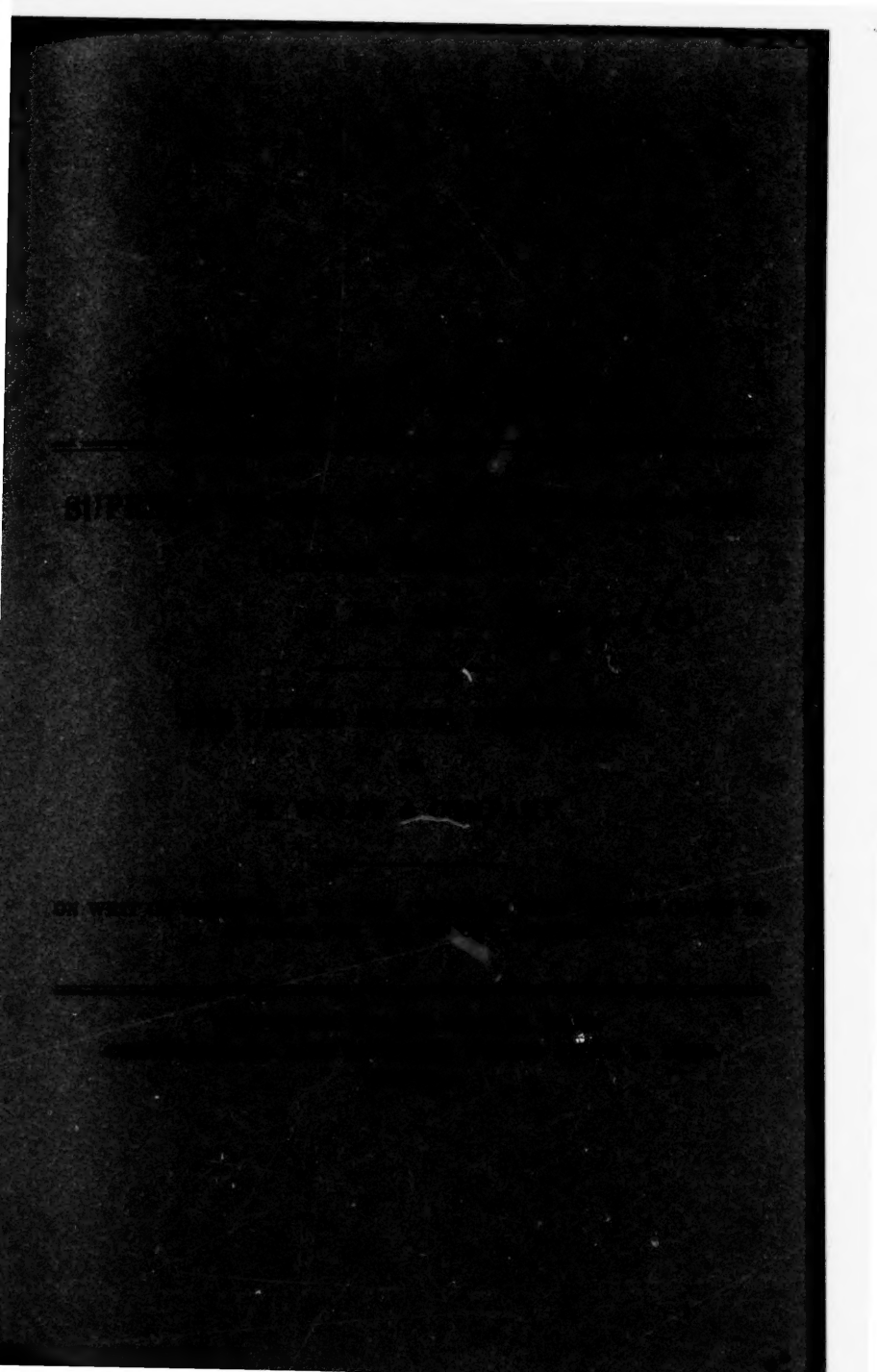
New York, June 3rd, 1898.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

63 (Indorsed:) United States circuit court of appeals, second circuit. Morrison & Son vs. United States. Return to writ of certiorari.

64 (Indorsement on cover:) Case No. 16869. Supreme Court U. S. October term, 1898. Term No., 294. The United States, petitioner, vs. E. A. Morrison & Son. Writ of certiorari and return. Filed June 9, 1898.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 295.

THE UNITED STATES, PETITIONER,

vs.

H. WOLFF & COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States circuit court of appeals for the second circuit.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE.

Transcript of record.—Appeal from the circuit court of the United States for the southern district of New York.

1 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post-office building, in the city of New York, on the fifth day of April, 1895.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of certain importations of merchandise made by H. Wolff & Co., on the vessels and at the dates as set forth in the annexed Schedule A, which is hereby referred to and made a part hereof.

SCHEDULE A.

The following are the importations and the entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Entered.	Protest No.	Decisions.
57433	H. H. Meier	Apl. 3/93	51525 A-8974	Mch. 8/95
58502	La Bretagne	" 4/93	51482 A-8972	"
131294	Elbe	Aug. 3/93	57236 A-14807	"
20735	Trave	Feb. 12/94	65631 A-3130	Mch. 6/95
21635	La Champagne	" 13/94	65473 A-3175	" 8/95

2 SCHEDULE B.

The Board of United States General Appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 60 per cent ad valorem on certain beads, stones, &c., thereby making errors of law and fact by failing to find, or finding the contrary of, the following propositions:

1. Said merchandise is glass beads, loose, unthreaded or unstrung.

2. Said merchandise is imitations of precious stones, composed of glass or paste, and does not exceed one inch in dimensions and is not set.

3. Said merchandise is manufactures, of which metal, and not glass, is the component material of chief value.

4. Said merchandise assimilates to precious stones within the sense and meaning of section 5, act of October 1, 1890.

5. The merchandise, of which proposition 1 is true, is dutiable at 10 per cent ad valorem, under par. 445 of said last mentioned act.

6. The merchandise, of which proposition 2 is true, is dutiable at 10 per cent ad valorem, under par. 454 of said act.

7. The merchandise, of which proposition 4 is true, is dutiable at 10 per cent ad valorem, under par. 454 and section 5 of said act.

8. The remaining merchandise is dutiable under par. 215 of said act, at 45 per cent ad valorem.

3 EXHIBIT A.

CUSTOM-HOUSE, PORT OF NEW YORK,
Collector's Office, June 12, 1893.

Hon. Board of U. S. Gen'l Appraisers, at the port of New York.

GENTLEMEN: I submit the protest of H. Wolff & Co. $\frac{51482}{\#8972}$ from the assessment of duty by this office at the rate of 60% ad valorem on certain so-called "beads in bunches" imported by them in the "Bretagne" Apl. 4–93.

An inspection of the invoice shows that the merchandise was returned by the appraiser as "mfs. glass 60%."

Duty was assessed thereon at the rate above stated under the provisions of par. 108, N. T. Note G. A., 257, 644, 665, 876, 934, & 936.

I have to report that the claimants have complied with the requirements of section 14 of the act of June 10, 1890.

The naval officer concurs in the decision of this office.

The entry and invoice covered by the above protest are inclosed herewith.

Respectfully, yours,

J. J. COUCH,
Special Deputy Collector.

(3 inclosures.)

4 EXHIBIT F.

NEW YORK, *May 20, 1893.*

COLLECTOR OF CUSTOMS,
Port of New York.

SIR: Protest is hereby made against your decision assessing duty at 60% ad val. on beads in bunches and otherwise and imitation stones covered by entries below named. The ground of objection, under the tariff act of October 1, 1890, is that said merchandise is not composed wholly or in chief value of this blown glass and is not otherwise covered by par. 108. It is covered by, and is dutiable under, par. 453, at 10% ad val. (directly or by assimilation or because of the component of chief value), par. 454 at 10% ad val. (by assimilation to precious stones, not set, or imitations of precious stones, or because composed wholly or in chief value of the latter), or par. 445 at 10% ad val. (directly or by assimilation or component of chief value), or sec. 4 at 20% ad val. (the entire or chief component being glass beads provided for as a separate article), or par. 454 at 25% ad val. (by assimilation to precious stones, set), or par. 76 at 25% ad val. (because composed wholly or in chief value of a chemical compound), or par. 459 at 25% ad val. (as manufactures wholly or in chief value of amber, coral, jet, paste, spar, or wax), or par. 215, at 45% ad val. (as manufactures wholly or in chief value of metal).

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved, and in support of the contentions herein.

5 The excess is paid under compulsion, solely to obtain possession of said merchandise, and you and the Government are held liable for the same:

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks and Nos.
58502.	La Bretagne.	Apl. 4/93.	C.	May 10 93.	H. W. & C. 1108. and various as per entries and invoices.

Respectfully,

H. WOLFF & CO.,
By COMSTOCK & BROWN,
Attorneys, 80 Broadway, New York City.

51482.

EXHIBIT K.

Before the U. S. General Appraisers at New York, Mar. 8, 1895.

In the matter of the protests $\frac{51482\text{—A \&c.}}{22254\ A/2059}$, etc., of R. Epstein and others against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain strung beads imported per the vessels and entered of the dates specified in the schedule.

Opinion by Sharretts, G. A.

We find as facts that the goods in question are made of glass, or of which glass is the component material of chief value, strung on threads or cords, being of the same character as those which were the subject of the board's decision on protests 8258*a*, &c. (not yet published), of H. Schmalhausen and others.

Following said decision, we hold that the goods are dutiable as assessed, at 60% ad valorem, under paragraph 108, act of October 1, 1890, and overrule the protests on all grounds.

W. F. LUNT,
J. B. WILKINSON, Jr.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

6 EXHIBIT L.

(G. A. 2961.)

Glass beads, strung.

Before the U. S. General Appraisers at New York, March 6, 1895.

In the matter of the protests 8258*a*–7228, etc., of Dunham, Buckley & Co., H. Schmalhausen, and others against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain glass beads, strung, imported per the vessels and entered at the dates specified in the schedule hereto appended.

Opinion by Sharretts, General Appraiser.

The goods here subject of protest consist of beads made of glass, or of which glass is the component material of chief value, strung upon

threads or cords for the purpose of assorting or for convenience in handling or transportation.

They were assessed for duty at 60 per cent ad valorem under paragraph 108, act of October 1, 1890, and are claimed to be dutiable at 10 per cent ad valorem under paragraphs 445 or 454, or at 25 per cent ad valorem as a chemical compound or as manufactures of wax not specially provided for under paragraph 76 or 459, or at 45 per cent ad valorem under paragraph 215, or at 50 per cent ad valorem under paragraph 452.

The board held, in G. A., 876, that similar goods (protest 11470*a*) were dutiable at 60 per cent ad valorem as assessed in these cases. On the importers' appeal (suit No. 592, Steiner, Kahn & Co.) the circuit court for the southern district of New York, and the circuit
7 court of appeals for the second circuit, successively affirmed the board's decision.

We find as facts that the goods are of the character above described, consisting of beads made of glass or of which glass is the component material of chief value, strung upon threads or cords.

We accordingly overrule the protests upon all grounds and affirm the assessment of duty in each case.

W. F. Lunt,
J. B. Wilkinson, Jr.,
Thad. S. Sharretts,
Board of U. S. General Appraisers.

United States circuit court, southern district of New York.

In the matter of the application of H. Wolff & Co., as to certain importations per "H. H. Meier," April 13, 1893, "La Bretagne," April 4, 1893, &c. No. 2182.

Before Hon. George H. Sharpe, as officer of the court.

New York, *May 19, 1896.*

Appearances: For the Importers—Albert Comstock (of Comstock & Brown). For the collector and Government—J. T. Van Rensselaer, Asst. U. S. Attorney.

It is hereby stipulated by and between counsel for the respective
8 parties hereto that the testimony taken in suit No. 2174, E. A. Morrison, shall apply herein so far as the same may relate to the merchandise which is the subject of this suit, with the same force and effect as though taken and returned herein.

Counsel for both parties hereto rest.

Testimony closed.

Morrison & Son } No. 2174.
vs.
United States. }

Wolff & Co. } No. 2182.
vs.
United States. }

Wheeler, *J.:*

The tariff act of 1890, by paragraph 108, provides for a duty of 60 per cent on "thin blown glass * * * and all other manufactures

of glass, or of which glass shall be the compound material of chief value, not specially provided for;" by paragraph 445, for a duty of 10 per cent on "glass beads, loose, unthreaded or unstrung;" and by paragraph 454 for a duty of 10 per cent on "imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set." There is no mention of beads strung. These
9 importations are of variegated glass beads, strung; similar glass ornaments without holes for stringing; black glass beads, sometimes called nail heads, unstrung, and hollow glass beads with wax inserted, giving an appearance like pearl strung. They have all been classified as manufactures of glass under paragraph 108, against protests referring to paragraphs 445 and 454. The classification of the black glass heads unstrung is, upon the evidence, conceded to be erroneous. Beads unstrung are impliedly beads capable of being strung; and the ornaments without holes for stringing are not such. The variegated beads strung are manufactures of glass, and, as they were not specially provided for, were properly classified. The wax beads, although they may be imitations of pearls as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes the imitation. And imitations of precious stones, unset, are impliedly imitations capable of being set, which these beads are not.

Decision of General Appraisers reversed as to black glass beads, and affirmed as to the residue.

Comstock & Brown, for plaintiffs.

James T. Van Rensselaer, Asst. U. S. attorney, for United States.

10 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 23d day of December, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Hon. Hoyt H. Wheeler, judge.

H. WOLFF & CO. }
vs. } "A" suit, No. 2182.
UNITED STATES. }

The above cause coming on for hearing and determination before this court on the application of H. Wolff & Co., importers, for a review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon, and the further evidence taken in the circuit court herein;

Now, after hearing James T. Van Rensselaer, assistant U. S. attorney, on behalf of the collector, for affirmance, and Comstock & Brown, counsel for the said importers, for reversal, on motion of Wallace Macfarlane, U. S. attorney,

It is ordered, adjudged, and decreed that there was no error in said

proceedings before said Board of General Appraisers, and that their decisions herein be and the same are hereby in all things affirmed.

(Sg'd) HOYT H. WHEELER,
U. S. Judge.

Consented to.

COMSTOCK & BROWN,
Attys. for Importers.

11 United States circuit court of appeals for the second circuit.

HERMAN WOLFF AND LOUIS WOLFF, TRADING AS H. Wolff & Co., in the matter of their importations by "H. H. Meier," April 3, 1893, et al., appellants,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } No. 2182.

Assignment of errors.

The above-named appellants hereby assign error to the decision and judgment of the circuit court of the United States for the southern district of New York herein in the following particulars:

First. In that the said court ordered, adjudged, and decreed that the decision of the Board of U. S. General Appraisers herein should be affirmed.

Second. In that the said court ordered, adjudged, and decreed that paragraph 108, act of October 1, 1890, covered and provided for the merchandise in question.

Third. In that the said court did not order, adjudge, and decree that the provision for "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set," in paragraph 454 of the said act covered and provided for said merchandise.

12 Fourth. In that the said court did not order, adjudge, and decree that the decision of the said Board of General Appraisers should be in all things reversed.

Dated New York, January 6, 1897.

COMSTOCK & BROWN,
Attorneys for Importers, Appellants.

United States circuit court of appeals for the second circuit.

H. WOLFF & CO., APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } No. 2182.

It is hereby stipulated by and between the counsel for the respective parties to this action that all the requirements of law as to protest, appeal to the U. S. circuit court, and appeal to this court have been duly and properly complied with herein, and that of the record and appeal to this court the following portions only shall be printed, viz:

The caption and Schedules A and B of the original petition, the collector's letter of June 12, 1893, the protest of May 20, 1893—all the several protests and collector's letters being substantially alike—the

decisions of the General Appraisers, the stipulation of counsel returned by the referee herein, the opinion of the circuit judge, the decree
13 of the circuit court, the assignment of errors, and this stipulation, and that no endorsement of or on any paper shall be printed.

And it is further stipulated that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act, as manufactures of glass not specially provided for.

Dated New York, March 18, 1897.

WALLACE MACFARLANE,
U. S. Attorney, for the Appellee.
COMSTOCK & BROWN,
For Appellants.

Ordered accordingly.
N. Y., March 20, 1897.

E. H. LACOMBE,
U. S. Circuit Judge.

14 United States circuit court of appeals for the second circuit. Nos. 54 and 55. October term, 1897.

Submitted December 17, 1897. Decided January 7, 1898.

E. A. MORRISON & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2174.

H. WOLFF & COMPANY, APPELLANTS,
vs.
THE UNITED STATES, APPELLEE. } 2182.

Appeals from the circuit court of the United States for the southern district of New York. Before Judges Lacombe and Shipman.

SHIPMAN, circuit judge.

In the year 1891, E. A. Morrison & Son imported into the port of New York two invoices of glass strung beads not exceeding one inch in dimensions, of two different kinds. One kind consisted of small brown beads, which were a very poor imitation of the precious stone known as "cats-eye," which were used principally in the millinery trade for trimming, or for trimming ladies' garments, and were popularly styled "jewels" or "jewel stones." The second kind consisted of larger beads than those of the first class, which were also strung and were imitations of precious stones, and did not exceed one inch in dimensions, and
15 were used for trimming and were also called "jewels." In 1893 and 1894, H. Wolff & Company imported into the port of New York sundry invoices of glass strung beads, not exceeding one inch in dimensions, which were imitation pearl beads and were called by that

name, or were called wax beads, or Roman beads, and were used for necklaces or for trimming. All these articles have been long commercially known as beads. The collector assessed a duty of sixty per cent ad valorem upon all of these goods under paragraph 108 of the tariff act of 1890, which was as follows: "Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

The importers protested that the goods were dutiable under paragraph 454 of the same act, which imposed a duty of ten per cent ad valorem upon "imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set." The Board of General Appraisers sustained the collector and the circuit court affirmed the decision of the Board upon the articles now in question, whereupon the importers appealed to this court. The cases were tried together upon substantially the same record.

"Glass beads, loose, unthreaded or unstrung" are dutiable at ten per cent ad valorem under paragraph 445 of the act of 1890. There is no duty specifically placed upon glass strung beads, and it is conceded that the merchandise in question was excluded from classification under paragraph 445, and that unless it was dutiable under paragraph 454, it was properly classified by the collector under paragraph 108, as manufactures of glass not specially provided for.

The articles were, in both popular and in commercial language, beads. The two Morrison importations, which were used for trimming were also called, apparently for convenience sake, "jewels," but this subname has no bearing upon the classification for tariff purposes. The
16 term "imitations of precious stones" is not a commercial term and has no especial commercial meaning. All these articles were in fact imitations of precious stones and are known to be such by the people who deal in them. The term "imitations of precious stones, unset," implies that there were imitations which were set; that is, made into or arranged as ornaments or imitation jewelry. A natural suggestion is that the two Morrison importations were to be exclusively used for trimming ladies' hats or apparel, and were not to be set into ornaments for the person, but there can be no practical tariff distinction between imitations of precious stones, made of glass or paste, unset, which are to be set into articles of jewelry and those imitations which are to be used as ornaments upon ladies' hats or apparel.

Inasmuch as the only glass beads which are named in the tariff act are unstrung beads, these strung beads are not classified by name, and their position for tariff purposes must be within some paragraph of general description. The only two paragraphs that can be discovered which describe them are Nos. 454 and 108. They are imitations of precious stones, composed of glass or paste, of the designated size, and are unset, and they are manufactures of glass, and if not specially provided for must fall into the general receptacle for glass articles which have escaped other classification. But adequate provision seems to have been made for them by the terms of paragraph 454.

The decision of the circuit court so far as it related to the articles in question is reversed.

Albert Comstock, for the appellants.
James T. Van Rensselaer, assistant United States attorney, for the appellee.

17 At a stated term of the United States circuit court of appeals for the second circuit, held at the United States court rooms in the city of New York on the 19th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorables E. Henry Lacombe, Nathaniel Shipman, circuit judges.

H. WOLFF & CO., APPELLANTS,
vs.
THE UNITED STATES OF AMERICA, APPELLEE. } Suit No. 2182.

The appeal from the decision of the circuit court of the United States for the southern district of New York herein, made on the 9th day of December, 1896, having come on to be heard, and due deliberation having been had thereon.

Now, on motion of Albert Comstock, esq., of counsel for the appellants, it is

Ordered, That the decision aforesaid be, and the same is hereby, reversed, and that the merchandise which is the subject of this proceeding is properly dutiable at 10% ad val. under Par. 454, tariff act of October 1, 1890, as imitations of precious stones; and it is further

Ordered, That a mandate issue to the circuit court of the United States for the southern district of New York, directing that court to proceed in accordance with the opinion of this court.

Assented to as to form.

WALLACE MACFARLANE,
U. S. Attorney, Attorney for Appellee.

18 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 17, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of H. Wolff & Company, appellants, against The United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the said United States the one hundred and twenty-second.

[SEAL.] WM. PARKIN, *Clerk.*

19 (Indorsed:) Case No. 16870. U. S. C. C. of appeals, 2nd circuit, Term No., 295. The United States, petitioner, vs. H. Wolff & Company. Exhibit to petition for writ of certiorari. Filed May 5, 1898.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which H. Wolff & Company are appellants and the United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
21 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

22 (Indorsed:) Supreme Court of the United States. No. 657. October term, 1897. The United States vs. H. Wolff & Company. Writ of certiorari.

23 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLEE,
vs.
H. WOLFF & COMPANY, APPELLANT, } No. 657.

Stipulation.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the United States circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, may be treated as the return to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.

ALBERT COMSTOCK,
Counsel for Respondent.

(Endorsed:) Wolff & Co. vs. U. S. Stipulation as to writ of certiorari. United States circuit court of appeals, second circuit. Filed June 3, 1897. William Parkin, clerk.

24 *To the honorable the Supreme Court of the United States:*

The record and all proceedings in the cause whereof mention is within made, having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certi-

fied copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, June 3rd, 1898.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

25 (Indorsed:) United States circuit court of appeals, second circuit. Wolff & Company vs. United States. Return to writ of certiorari.

26 (Indorsement on cover:) Case No. 16870. Supreme Court U. S. October term, 1898. Term No., 295. The United States, petitioner, vs. H. Wolff & Co. Writ of certiorari and return. Filed June 9, 1898.

No. 656. 15

FILED
MAY 5 1898
JAMES H. McKENNEY,
CLERK

Brf. of Atty. Gen.l (Richards) for Petitioner.

Filed May 5, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

G. A. MORRISON & SON, APPELLANTS,
v.
THE UNITED STATES.
} No. 656

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

G. A. MORRISON & SON, APPELLANTS,
v.
THE UNITED STATES.
No.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Solicitor-General, on behalf of the United States, respectfully prays for a writ of certiorari to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of section 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891. This cause and the case of *H. Wolff & Co.* v. *United States*, in which a similar application is submitted, arose under the customs administrative act of June 10, 1890, protests or notices of dissatisfaction having been filed by the importers with the collector of customs for the collection district and port of New York. The Board of General Appraisers sustained the collector, and on petition to review their decision, it was affirmed by the circuit court as to the articles now in question. An appeal was taken by the importers, which resulted in a reversal

of the decision of the circuit court by the circuit court of appeals. The cases were tried together substantially upon the same record.

The question to be decided is as to the proper classification for duty, under the tariff act of October 1, 1890, of strung glass beads, made in imitation of jewels. The question is of importance pecuniarily. The Secretary of the Treasury, in requesting that the matter be carried to this court, states that the issue is of the utmost importance, and that the amount involved in this and similar cases and in pending protests is approximately $315,000.

STATEMENT OF FACTS.

These cases involve certain importations, made in 1891, 1893, and 1894, of glass strung beads, which were imitations of pearls, cat's-eyes, and various other precious stones, none exceeding one inch in dimension. They were classified by the collector under paragraph 108 of the act of 1890 as "manufactures of glass * * * not specially provided for in this act, 60 per cent ad valorem." The importers claimed that they were dutiable at 10 per cent ad valorem under paragraph 454, as "imitations of precious stones, composed of paste or glass, not exceeding one inch in dimensions, not set."

Some of the importers' witnesses testified that the articles were known commercially as beads prior to 1890 as well as since, and sometimes as jewels, being used "for trimming purposes to imitate precious stones" (Record, Morrison case, p. 9; and see stipulation in record of Wolff case, p. 7); but that, while they were variously known as jewels or imitation jewels, jewel trimmings, imitation

pearls, etc., the use of such names did not "take anything away from their character as beads" (p. 19). One of the witnesses for the Government, who was an importer of beads, testified that he was familiar with the class of articles known commercially as imitations of precious stones, but that he had never known them to have holes in them or through them (p. 41). This witness, with the other witnesses for the Government, identified the exhibits in the case as beads—wax beads and pearl beads.

The weight of evidence shows the articles to have been known, popularly and commercially, as beads. The only paragraph relating to beads in the act of 1890 (par. 445) provides for "glass beads, loose, unthreaded, or unstrung." Strung beads are not specially provided for, and the beads in question must therefore fall under the provisions of one of the only two paragraphs which can be found to describe them generally, namely, paragraph 108 and paragraph 454.

The record shows (Record, Morrison case, pp. 4, 5, 9, 10, 12, 15, 21, 34, 35, 40, 44; and see stipulation in record of Wolff case, p. 7) and the circuit court of appeals find in their opinion (84 Fed. Rep., p. 444) that the respective similar importations in the two cases involved consisted in the one case of glass strung beads not exceeding 1 inch in dimensions, which have been long commercially known as "beads," and that they were imitations of precious stones popularly styled jewel stones or jewels, and that in the other case they were also glass strung beads under an inch in dimension, which were imitation pearls known as pearl beads or wax or Roman beads, and were used, respectively, in the millinery trade for

trimming and for necklaces and trimming. The question really is whether the known commercial designation determines the classification, or a specific provision *eo nomine*, by which they were also known, though this was not their commercial designation.

The circuit court (77 Fed. Rep., 605) found that the strung beads first referred to were manufactures of glass not specially provided for, although they were imitations of precious stones, and that imitations of precious stones not set are by implication imitations capable of being set, which these beads were not; also that the wax or Roman beads, although imitations of pearls, were not composed of glass or paste, but glass and wax, and did not therefore fall within paragraph 454, which provides for imitations of precious stones composed of glass or paste.

The circuit court of appeals, in reversing the decision of the circuit court, found, however, that although the suggestion is natural that the beads of the first class were to be used exclusively for trimming hats or apparel, and were not to be set into ornaments of the person, there can be no practical tariff distinction between imitations of precious stones unset which are to be set into articles of jewelry, and such imitations which are to be used as ornaments upon hats or apparel.

The reason for holding that the decision of the circuit court of appeals is erroneous and for seeking a review of it are as follows:

First. As the importations of these classes of beads strung were specially intended for use in trimming ladies' wearing apparel and were not adapted for setting in the manufacture of jewelry, to which use imitations of

precious stones are generally put, they can not be considered imitations of precious stones not set, inasmuch as that designation in paragraph 454 necessarily implies that the imitations of precious stones contemplated are such as are capable of being set, and are ordinarily and chiefly or generally used for that purpose. Therefore this merchandise is specially provided for in paragraph 108 and the duty was properly assessed by the collector and determined by the circuit court.

Second. As the remaining portion of the merchandise consisted of flat pieces of glass drilled for stringing, and as there is no special provision for "glass strung beads," and the evidence shows that these beads were intended for trimming or ornamenting hats and wearing apparel, they are not, therefore, imitations of precious stones, but are properly dutiable as manufactures of glass as assessed.

Third. The further reason for granting the application in this case is that the question is a continuing one and is not restricted to the act of 1890. The same or similar questions have arisen under the cognate provisions of the act of 1894 (28 Stats., par. 99, p. 514; par. 102, ibid.; par. 338, p. 534) and of the act of 1897 (pars. 112, 408, and 435).

A certified copy of the entire record of the case in the circuit court of appeals, including its opinion, is filed as part of this application.

It is respectfully submitted that a writ of certiorari should be granted as hereinbefore prayed.

JOHN K. RICHARDS,
Solicitor-General.

No. 657, 1897.

FILED
MAY 5 1898
JAMES H. McKENNEY,
CLERK.

Brief of Atty. Gen'l (Richard)
for Petitioner.

Filed May 5, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

H. WOLFF & CO., APPELLANTS,
v.
THE UNITED STATES.
} No. 657

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

H. WOLFF & CO., APPELLANTS,
v.
THE UNITED STATES.
No.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Solicitor-General, on behalf of the United States, respectfully prays for a writ of certiorari, to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of section 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891.

This case is similar in every respect to that of *G. A. Morrison & Sons, appellants,* v. *The United States,* in which an application has been submitted for certiorari. In fact the two cases were tried together in the lower court. It is unnecessary to state the facts and reasons in support of the application, as they are set forth fully in the application in the Morrison case.

JOHN K. RICHARDS,
Solicitor-General.

18682

Nos. 15 & 16 Oct. Term.

Brief of Atty. Gen. for U. S.

Filed Oct. 14, 1899.

Office Supreme Court U. S.
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OCT 14 1899
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, PETITIONER,
v.
E. A. MORRISON & SON. } No. 15

THE UNITED STATES, PETITIONER,
v.
H. WOLFF & CO. } No. 16

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

2148

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, PETITIONER, v. E. A. MORRISON & SON. } No. 73.

THE UNITED STATES, PETITIONER, v. H. WOLFF & CO. } No. 74.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These two cases raise the same question upon about the same facts. They were tried together below upon substantially the same record.

The Morrison case involves two importations in 1891 on merchandise returned by the appraiser as manufactures of glass and claimed by the importers to be imitations of precious stones composed of paste or glass. They were small brown glass beads, strung, of two sizes, which were imitation "cat's-eyes" or "tiger-eyes." The merchandise in the Wolff case was imported in 1893 and the early part of 1894, and consisted of glass strung beads made in imitation of pearls and called wax beads or Roman beads. In both cases the collector classified the merchandise for duty under paragraph 108 of the tariff act of October 1, 1890, which provides:

> Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem.

It was claimed by the importers (other claims being finally abandoned) that the proper classification was under paragraph 454 of that act, which provides:

> Precious stones of all kinds, cut but not set, ten per centum ad valorem; if set, and not specially provided for in this act, twenty-five per centum ad valorem. Imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem.

(Morrison rec., p. 35; Wolff rec., p. 7.) The record references to testimony hereafter in this brief will be to the Morrison record, because no testimony was taken in the Wolff case and it was stipulated therein (Wolff rec., p. 4) that the testimony in the Morrison case should ap-

ply so far as the same relates to the merchandise which is the subject of the Wolff suit.

Due proceedings by protest under the customs administrative act were had, and the decision of the Board of General Appraisers sustained the collector as to the merchandise now in question and some additional articles. The circuit court affirmed the decision of the board upon the articles now in question (Rec., pp. 3, 32), whereupon the importers took an appeal to the circuit court of appeals, which reversed the decision of the circuit court and held that adequate provision for the merchandise was made under paragraph 454. The cases are now before the court on writs of certiorari directed to the United States circuit court of appeals for the second circuit.

The importers called six witnesses connected with the importers or associated in other houses importing similar merchandise (Rec., pp. 4, 16), or who were importers of precious stones (pp. 16, 21), who testified that the wax beads included and so described in the several Wolff entries were in some of the French entries thereof described as "perles;" that they all are beads, and were so known commercially before and after the passage of the act of 1890; that they are also known as jewels and were used for trimming purposes to imitate precious stones; that they represent pearls (p. 6); although beads rather than jewels is their regular trade name (p. 7); that the cat's-eye portion of the merchandise is used in trimming and also is known in trade as jewels as well as beads because they imitate real jewels or real precious stones (p. 8); that they are a very poor imitation of a

cat's-eye (p. 9). The witness Baldwin, connected with the firm of Morrison & Son, says that they are bought and sold as cat's-eye beads at least, but when asked whether he had ever heard them designated in trade or bought and sold as imitation cat's-eye stones, answers: "I have never heard anything about that" (p. 10). He classes them as jeweled stones, and says that people call them beads and call them stones; he supposes both terms are appropriate (*id*). When this witness was asked by the importers' counsel whether it is a known practice to drill precious stones so that they become a bead he answers "No" (p. 10); although the lapidary called by the importers (p. 16) states that precious stones are dealt in with holes drilled through them as well as without in the form of beads, that they are also half drilled—that is, with a hole halfway through, and that precious stones in these forms are included in the trade understanding of the term "precious stones."

Other witnesses testify that both the cat's-eye and the imitation pearls, or articles similar to them with which they are familiar, are included in the commercial meaning of the word "beads," and are known as imitation pearls or wax beads, (p. 11). Beads would be the general name for both the cat's-eye and the imitation pearls, the latter being a subclass of beads called imitation jewels (p. 12). The witness here, though, has no business familiarity with the different real precious stones. But special names do not take away from the commercial character as beads (p. 13). So far as this witness's knowledge goes, both the articles in question are only employed to give an imitation of some costly jewel or gem

(p. 13). "In trade they call them imitation jewels; we classify them as beads, * * * a certain class of beads" (p. 14). This witness testifies that there is an article in his trade dealt in as imitation pearls, which are similar to, though not the same as, the so-called imitation pearls in suit, being pressed only on one side and used to form the head of a pin. That is the only other kind of imitation pearls that he knows of, and they are called pearl pins when mounted, and before mounting as pearls, half pearls, or three-quarter pearls, although they are in fact an imitation (p. 15). This witness is not familar with real jewels or precious stones. From his testimony it is evident that the usual names of the articles are wax beads or Roman beads, and that they are only called for once in a while as imitation pearls (*id*).

The testimony of a lapidary and of a salesman for an importer of precious stones shows that a cat's-eye drilled through would be known as a precious stone (p. 17), and that in this form it would be used for jewelry purposes only, and that pearls are members of the commercial class of precious stones, and are also drilled as well as undrilled, and when drilled are devoted to ornamental purposes similar to the purposes which they subserve when undrilled. The witness was familiar in trade with imitation precious stones as large as an inch in dimensions, but the finer class of imitation precious stones would be smaller (pp. 17, 18, 20, 21). The salesman of the precious stone importers, however (p. 22), doubts if pearls are included in the meaning of precious stones, because a pearl is not a stone, but says that in trade they have always been regarded as such. The witness's house deals

in imitation precious stones as distinguished from genuine ones for use in the jewelry trade. This appears to have been in very small quantities, in fact only in samples, at least as to the low grade in quality and character of the articles before the court. He knew nothing in his house of precious stones or imitation precious stones being used for trimmings or decoration.

The Government called five witnesses who were importers of millinery goods, beads, etc., or were employed in the jewelry and notion department of a well-known house of trade in New York (pp. 23, 32). The importer, Veith (p. 23), stated that the imitation cat's-eye had no commercial name at the time it was imported, being a novelty and only lasting one season; it was used in making ornaments like other articles of rhinestone, paste, and glass; that the pearl beads were commercially known as and were called wax beads or Roman beads; that there was a class of articles known and recognized as imitation precious stones unset, and that the cat's-eyes and imitation pearls were so known and called (p. 25). The witness later thought they were known rather as imitation jewels, and these statements, being apparently contrary to what he had stated to a Government representative previous to the hearing, caused the Government counsel to plead surprise (*id.*). The witness evaded the question whether he had not said that neither the cat's-eyes nor the imitation pearls were commercially known as imitation precious stones. He was vague in his replies on this subject, and did not remember exactly what he had said (p. 26). He also varied the reference to an apparently previous statement that imitation precious stones as known in trade

did not have holes in them. Another witness, who dealt in such imitation precious stones as emeralds, rubies, amethysts, diamonds, and sapphires, stated that the pearl beads did not belong to the commercial class of imitation precious stones, and that he never knew articles of that class as correctly known to have holes in them (p. 28). One of the witnesses from the department store in question testified that the imitation pearls were known in trade and commerce in the country as wax beads; that the house was dealing in such beads before October, 1890, and were selling them at wholesale, and that they were not at that time dealing in an article commercially known as imitation pearls, although some people might call them pearl beads as well as wax beads (pp. 30, 31).

ARGUMENT.

It will clear and facilitate the argument to indicate the features which have disappeared from the case. Thus, there were originally certain "mat jewel stones" involved, as to which the general appraisers found for the importers (p. 3) and the Government acquiesced. These articles appear to have been imitations of real jewels, such as rubies, sapphires, and diamonds, and to have been shown by Exhibit 3 in the case, Exhibits 1 and 2 representing the cat's-eyes and Exhibit 4 the pearl or wax beads (p. 5 et seq.). The circuit judge found in favor of the importers as to certain black glass beads called nail heads, but these articles are not now in question. They were unstrung, and the classification thereof was conceded to be erroneous (p. 32). The importers first claimed that the cat's-eyes were entitled to entry as

beads, loose, threaded, or unstrung, but that claim was afterwards not insisted upon (Mr. Comstock's concession, p. 9).

The case thus presents the single question whether the two kinds of merchandise herein involved, being made of glass and being in fact beads threaded or strung at the time of their importation, and thereby excluded from the classification under paragraph 445 of the act of 1890 ("loose, unthreaded, or unstrung"), are properly to be classified as manufactures of glass not specially provided for under paragraph 108, or as imitations of precious stones under paragraph 454. Are these articles imitations of precious stones, composed of paste or glass not exceeding 1 inch in dimensions and not set, and therefore entitled to the rate of duty under the more specific provision of paragraph 454? They were within the required dimension and they were unset. The circuit court found that the wax beads were not composed of *glass or paste*, but of *glass and wax*. This distinction should be regarded as vital. In G. A. 1891 it is said: "The term paste is usually applied to a glass-like substance, but * * * [it] has for many years also been applied to beads and ornaments of dough composed of flour and substances made to imitate articles of bone or ivory, and also to colored beads similar in appearance to these now in question." As indicated in G. A. 3965, although paste may be a kind of glass, yet inasmuch as Congress, in tariff acts, has used the word "paste" as well as the word "glass," they are different substances within the meaning of the law, and this is equally true as to the word "wax" for the same reason. The merchandise in ques-

tion, therefore, does not meet one of the necessary conditions of paragraph 454, because as to the pearls, at least, it is not composed of glass *or* paste, but of glass *and* wax. The circuit court also found that the language, "imitations of precious stones not set," implies imitations capable of being set, which these beads are not. This merits the attention of the court, although the court of appeals thought that there was no practical tariff distinction between imitations of precious stones unset, but capable of being set, and those imitations which are to be used as ornaments upon ladies' hats or apparel.

The case therefore to a great extent resolves itself into the question, Are these imitation cat's-eyes and the wax beads or imitation pearls *imitations of precious stones?*

It may be considered that the testimony is incomplete and unsatisfactory, but the question is largely an academic one, and in one aspect at least is not wholly dependent upon the evidence in the case, because the main query is, Are cat's-eyes and pearls precious stones? Besides, the evidence is that the commercial designation as beads is well established; there is no conflict on that. The majority of the witnesses called also testified that the imitation cat's-eyes were known as imitation jewels rather than imitation precious stones. The expressions are "cat's-eye beads," "cat's-eye stones," "jewels," etc. It was sought to show that these particular beads in the trade understanding fall under a special subclass known as imitation precious stones, but this did not satisfactorily appear. These allegations seemed to refer particularly to the "mat jewel stones" and the imitation pearls (p. 12). The majority of the witnesses also considered pearls to

be among precious stones, but three of the Government witnesses substantially denied all of these statements and propositions, and one of the importers' witnesses (p. 22) evidently doubts that the pearl is a precious stone, not being a stone at all.

A. The articles were not imitations of *precious stones*.

1. *As to the cat's-eyes.*—The genuine stones appear to be a fine and hard variety of agate or quartz, and like the rhinestone, the crystal, the moonstone, or various other varieties of the agate, are not really precious stones at all. The precious stones, in the common understanding and by the tests of rarity, value, and hardness of texture, include generally the well-known varieties of diamond, emerald, ruby, and sapphire, and the imitations of these stones properly received the lower classification for duty and fell out of the case. The cat's-eye does not truly fall within the class regarded as semiprecious stones, like the topaz and the turquoise, which may extend to the amethyst and the garnet; although in G. A. 4166 the board were inclined to extend the term "semiprecious stone" to the cat's-eye as well as the amethyst and topaz. Therefore these cat's-eyes, which were poor imitations at best and indubitably manufactured of glass, are excluded from the paragraph providing for imitation precious stones and must fall under the paragraph for manufactures of glass not specially provided for. This has always been the Government position as to articles of this character. Thus, Treasury Decision 2153 classified imitation precious stones, not set, made of colored Bohemian glass and cut to represent various kinds of pre-

cious stones, under the provision for "Bohemian glass * * * and all manufactures of glass not otherwise provided for," in the act of June 30, 1864. So, by decision 9214 certain *agate* bars with holes drilled through them for stringing, and agate links consisting of oval beads fully perforated, claimed to be dutiable as *precious stones* under the act of 1883, were classified as beads. So, under the act of 1890, duty was assessed by G. A. 386 under paragraph 108, and not under paragraph 445, as claimed, upon unstrung glass beads not exceeding one-half inch in diameter, and of different colors, in imitation of precious stones. In that case the articles were "known commercially as beads, being severally designated in the trade as jewel beads, oval beads * * * and are used in the manufacture of bead ornaments and trimmings." Some decisions of the Board of General Appraisers under the act of 1890 classified similar glass beads *unstrung* under paragraph 445, but these appear to have been cases where the imitation was of an undoubted precious stone (e. g., G. A. 386; G. A. 1689).

Proceeding under the act of 1890, the Board of General Appraisers found in accordance with the Government's contention here, in G. A. 568, where the beads were composed of glass, coated internally with gelatin, and in G. A. 644, regarding beads composed of glass resembling white and pink pearls, and in G. A. 974, as to beads commercially known as agate beads, but of which glass was the component material of chief value. In G. A. 1727, where the beads were strung and the board found that they were capable of being set or of being strung into necklaces, and being colored to imitate the

"turquoise, a precious stone," they classified them under paragraph 454; and also in G. A. 2961, where the beads were made of glass and were strung upon threads or cords. The character of the goods in this case was similar to those in the case of *In re Steiner* (66 Fed. Rep., 727), involving glass beads threaded on strings. In G. A. 4418, arising under the tariff act of 1897, the board held that amber beads are not imitations of precious stones, which was one of the alternative claims; and in 21,054, relating to unthreaded beads of garnet, amethyst, crystal, and other substances, under the act of 1897, the syllabus refers to these substances as "so-called *semi-precious* stones;" and in G. A. 4458 certain necklace paste goods consisting of small beads of various colors, in form suitable for use in making necklaces, were held by the board to be in no sense imitations of precious stones.

The classification of precious stones in the Standard Dictionary is as follows: Diamond, emerald, opal, ruby, sapphire, turquoise, and others, not including the cat's-eye or pearl, although in a long list of stones, gems, etc., the cat's-eye is noted as semiprecious. The Century Dictionary gives the following definition:

> *Precious stone*, a stone distinguished for its beauty and rarity, and prized for use in ornamentation, especially in jewelry; a gem; a jewel.
>
> Beauty of color, hardness, and rarity are the essential qualities which entitle a mineral to be called precious. Strictly speaking, the only *precious stones* are the diamond, ruby, sapphire, and emerald, though the term is often extended to the opal, notwithstanding its lack of hardness, and to the pearl, which is not a mineral, but strictly an animal product.

We therefore contend as to the cat's-eyes that even if it is proper to hold that mat jewel stones imitating undoubted precious stones, although drilled or partly drilled, are to be classified under paragraph 454 as imitation precious stones, the imitation cat's-eyes which we are now considering are not to be regarded as precious stones at all, nor even as semiprecious stones, but, like agates, crystals, moonstones, and similar stones used for purposes of jewelry or adornment, are merely a lower grade of stones susceptible of such use because of their texture and qualities of appearance and finish when cut and polished.

2. *As to the pearls.*—The academic or the general aspect of this question, which is not dependent entirely upon the evidence in this case, appears more clearly perhaps in relation to the so-called pearls than to the cat's-eyes. The question whether a pearl is or is not a precious stone has received more light from scientific and literary as well as legal authorities than in the other case. It appears very clearly in the decisions of the general appraisers, Nos. 4164 and 4166, on imitation pearls and on split pearls, and in No. 4175, on imitation or encrusted stones (all arising under the tariff act of 1897), from irrefragable evidence, to wit, the testimony of the most eminent and reputable dealers in precious stones in the United States, that pearls are not and never have been known in commerce or, indeed, in any speech as precious stones; that they are not in fact stones or mineral substances at all, but are calcareous marine products. The decisions of the board last cited reverse the ruling

in G. A. 2949, although not in terms referring to the latter.

The attention of the court is respectfully and particularly directed to these rulings of the board, and to G. A. 4186. Quoting from G. A. 4175, at the portion thereof specially referring to imitations of black onyx, cat's-eye, and other forms of opaque glass of different colors, the board says:

> The first-mentioned articles simulate precious stones or semiprecious stones in tint or color only, and in most instances even this resemblance is comparatively slight. * * * It is assumed that it was the intention of Congress that imitations of precious stones should at least bear a close resemblance to the articles they were intended to imitate. For example, that an imitation diamond should possess the iridescence, reflective brilliance, or display of prismatic colors which are the distinguishing characteristics of the real stone, and should not be a mere faceted piece of white glass destitute of those qualities.

This is particularly apt in view of the statements in the testimony and the opinion of the circuit court of appeals that the imitations of the cat's-eye were poor imitations and that they were merely "small brown beads."

Pearls have also been distinguished from precious stones in all our recent tariff acts. Thus, in the act of August 28, 1894, pearls strung, but not set, are dutiable at 10 per cent under paragraph 337, and "precious stones of all kinds" at 25 per cent under paragraph 338, which also provides a duty of 30 per cent on pearls set; and in the act of July 24, 1897, paragraph 434 provides for

"precious stones set, pearls set or strung;" paragraph 435 for "diamonds and other precious stones * * * not set," and paragraph 436 for "pearls * * * not strung or set."

The only ground that can be perceived for the claim that imitation pearls made of glass are dutiable under tariff provisions for imitation precious stones is that both are sometimes handled by dealers in jewelry, who, it is well known, also deal in watches, clocks, bric-a-brac, paintings, statuary, and a great variety of other articles. It seems, further, that there is no authority to be found in the literature of modern times on the subject for classing pearls as precious stones; on the contrary, they are specifically differentiated therefrom. For example, in the introductory verses to the first part of the "Pilgrim's Progress" we find the lines:

> That gold, those pearls and precious stones that were
> Worth digging for, and that with greatest care.

Ancient literature is to the same effect. Thus in the book of Revelations, Chapter XVIII, verses 12–15, "gold and precious stones and pearls" are spoken of, and among the precious stones mentioned in the twenty-first chapter are included the amethyst and the topaz, but not the garnet or the agate, and nothing which appears to include the class in which the cat's-eye belongs, unless beryl might be thought to do so.

In short, neither the small brown beads, which were a very poor imitation of the stone known as cat's-eye and were simply *small brown beads* made of glass, apparently lacking in the play of color or elusive change of

light and shade which characterizes the genuine cat's-eye, nor the wax beads or Roman beads, the so-called imitation pearls, were entitled to classification as imitation precious stones. Some of these same "small brown beads" appear to have been included in the protest cases covered by G. A. 4175, and the disinterested expert witnesses there testified in substance that they did not imitate or simulate any articles known commercially as precious stones or as semiprecious stones.

B. The articles were not such *imitations* as Congress meant, on the tests of the statute itself.

Finally, the condition of these beads merits attention. There is no clear evidence to be found in the record that the mat jewel stones representing apparently unquestioned precious stones had holes drilled through them or in them, although they may have been so drilled. Witnesses, referring to articles shown them—namely, topaz, crystal, and crocidolite, which seems to be a scientific name for the cat's-eye (pp. 16, 17), and to the garnet, aquamarine, and moonstone (p. 18), which appear to have been embraced in Exhibit 3—stated that such stones may have holes drilled through them and that precious stones are dealt in in that condition. But even if this were so, which we claim is denied by the testimony as a practice among dealers in precious stones, the articles to which that evidence particulary referred have disappeared from the case, and we are now concerned with the question of the drilled condition as to cat's-eyes and pearls especially; so that, even if it is admitted for argument that these two classes of articles are embraced among precious or

semiprecious stones, we contend that they were not properly imitations of precious stones, because their perforated condition prevented them from meeting the usual tests of such articles, and shows that they could not rightly be regarded as coming within the "unset" state demanded by the act. There were holes drilled through them, either for the purpose of stringing them on a necklace or for use in ornamenting millinery and garments. This is not the customary condition of unset stones, precious or semiprecious; these may be cut or faceted, or at the most partly drilled at points, for further use in jewelry; but the perforation in these beads represents a condition by which they are in plain and common understanding differentiated from unset precious stones, and are for this additional reason denied the character of being imitation precious stones. It is true that the lapidary called by the importers (p. 16) states that precious stones are dealt in with holes drilled through them as well as without, and are also in what is called half-drilled form, with a hole halfway through, and that pearls (p. 18) are dealt in drilled as well as undrilled. But one of the Government witnesses who dealt in the rightly named class of imitation precious stones (that is, imitation emeralds, rubies, diamonds, and sapphires) states that he never knew them to have holes in them or through them. In this balance of testimony there is room for the ordinary knowledge and understanding on the subject to obtain a hearing, and that is plainly against the importer's contentions. Such beads have passed out of the condition (if they ever were entitled to it) of imitation precious stones unset and have attained to the character of trimmings.

It seems that similar glass beads when arranged and strung upon threads are used in embroidery work and are known as trimmings. G. A. 4186, covering various glass beads, including imitations of diamonds and imitation pearls, show this character, although in reference to somewhat different articles, which were classified under another paragraph.

It is true, it must be admitted that in decision 3995 perforated genuine pearls "merely strung on threads" were held to be dutiable under provisions for pearls *not set*, intimating that the perforation did not interfere with their character as articles of jewelry to be set. But it must be remembered that pearls after all are not precious stones, in reference to which the absence of perforation is particularly necessary relative to the setting, and that it was proved in the suit over the subject of said decision that the arrangement of the pearls upon threads or strings was only for convenience of transportation and did not change their essential character, the contest in that case being between a classification as "pearls" or as "beads."

Now, since these strung glass beads are not properly imitations of precious stones, although composed of paste or glass not exceeding one inch in dimensions—even waiving the facts that though not set they are incapable of being set by reason of the holes drilled through them and that, as to the pearls, they were composed of glass *and* wax—they do not fall as claimed under paragraph 454 at all, and must therefore fall under paragraph 108, providing generally for "all manufactures of glass or of which glass shall be the component material of chief value, not specially provided for in this act."

Thus we assemble the reasons in favor of the collector's classification as follows:

The stones, of which these articles were poor and crude imitations, are not precious stones. The articles (particularly the imitation cat's-eyes) were not imitations fairly embraced in the Congressional meaning and intention, because—

(*a*) They were poor imitations;

(*b*) They were drilled for stringing or trimming purposes, and therefore were not intended for the jewelry use of real precious stones, which is the kind of imitation precious stones pointed out by the language of Congress.

That is, though unset, they were not, in their perforated condition, properly capable of being set.

As to the pearls, especially, they were not made of *glass or paste* but of *glass and wax*, and these things are all separately and specifically provided for in tariff acts, and the use of each term has a definite and differentiated meaning attached.

We further state the argument in the language of the three grounds upon which the application for certiorari herein was rested, substantially as there framed:

First. As the importations of these classes of beads strung were specially intended for use in trimming ladies' wearing apparel, and were not adapted for setting in the manufacture of jewelry, to which use imitations of precious stones are generally put, they can not be considered imitations of precious stones not set, inasmuch as that designation in paragraph 454 necessarily implies that the imitations of precious stones contemplated are such as are capable of being set and are ordinarily and

chiefly or generally used for that purpose. Therefore, this merchandise is specially provided for in paragraph 108, and the duty was properly assessed by the collector and determined by the circuit court.

Second. As the remaining portion of the merchandise consisted of flat pieces of glass drilled for stringing, and as there is no special provision for "glass-strung beads," and the evidence shows that these beads were intended for trimming or ornamenting hats and wearing apparel, they are not, therefore, imitations of precious stones, but are properly dutiable as manufactures of glass as assessed.

Third. The question is important because it is a continuing one and is not restricted to the act of 1890. The same or similar questions have arisen under the cognate provisions of the act of 1894 (28 Stat., par. 99, p. 514; par. 102, ib.; par. 338, p. 534) and of the act of 1897 (pars. 112, 408, and 435).

We respectfully submit that the decision of the circuit court of appeals should be reversed, and the decision of the circuit court sustaining the Board of General Appraisers and the collector as to the articles now in question should be affirmed, and said articles be held to be dutiable at the rate of 60 per cent ad valorem as manufactures of glass not specially provided for under paragraph 108 of the tariff act of 1890.

HENRY M. HOYT,
Assistant Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1900.

THE UNITED STATES, PETITIONER, v. E. A. MORRISON & SON. } No. 15.

THE UNITED STATES, PETITIONER, v. H. WOLFF & CO. } No. 16.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL BRIEF FOR PETITIONER FILED UNDER LEAVE GIVEN AND QUESTIONS FRAMED BY THE COURT.

Following the questions to which the court has directed the attention of counsel by the order entered May 28, 1900—

I.

What is the precise scope and effect in this court of the stipulation of March 18, 1897, respecting the character and alternative classification of the merchandise whose proper classification is at issue?

The stipulation (p. 34, Morrison record; p. 6, Wolff record), after agreeing upon the make-up of the two records here, *mutatis mutandis*, concludes with the following paragraph:

> And it is further stipulated that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act as imitations of precious stones, etc., it was properly classified by the collector of customs under paragraph 108 of the said act as manufactures of glass not specially provided for.

The agreement upon the composition of the record has an important bearing upon the scope of the stipulation, because analysis of the various portions of the record in the circuit court of appeals, which are included in the record here, shows exactly what merchandise and what inquiries are to be considered here. Therefore it is important to clear up the matter at the outset and show just what articles and questions are now actually before the court.

Investigating the stipulation, then, with that object in view, it is evident that in the Morrison case two entries were involved covered by one protest; that certain "masses mat jewel stones," which were loose beads, unthreaded or unstrung, were eliminated from the case, the determination regarding them being in favor of the importers, and that the remainder of the goods were glass beads threaded or strung upon threads or cords. (Mor-

rison record, pp. 1–3.) The testimony shows that in one of the two importations in the case there were "two thousand tiger-eyes, red," all the other articles therein being the "masses of mat jewel stones" of different colors; that in the other importation (of Morrison & Son) there were "cat's-eyes, tiger-eyes," and "masses of mat jewel stones, garnet, medium blue, and straw." (Morrison record, p. 4.) From this it is clear that the Morrison case involved cat's-eyes; it seems also to have involved "mat jewel stones," which were not loose beads unthreaded or unstrung, like the portions thereof decided in the importers' favor.

The Wolff record (pp. 1–3) shows that there were several importations which are called variously "beads in bunches," "certain strung beads," and are identified as the wax beads and imitation pearls of Exhibit 4 of the case on page 5 of the Morrison record. It should be noted, as bearing on the next question propounded by the court, that the decision of the General Appraisers in the Wolff case finds that the goods are of the same character as those which were the subject of decision on protests of Schmalhausen and others, and in the decision on these latter protests it is stated that "the goods here subject of protest consist of beads made of glass, or of which glass is the component material of chief value, strung upon threads or cords for the purpose of assorting or for convenience in handling or transportation." (Wolff record, pp. 3, 4.) But that decision of the General Appraisers on the Schmalhausen protest is not to be taken as incorporated in the facts of the present cases, so as to

make the beads here, in effect, unthreaded or unstrung, and thus tend to set aside the agreement of the stipulation that paragraph 445 of the act of 1890 does not apply to these articles, or to overcome the definite finding of the circuit court of appeals, whose conclusion was in favor of the importers, that the principal use of these beads was for trimming. This point will be referred to hereafter.

I find no Exhibit 1 in these records; it probably referred to the articles as to which the importers were successful and which therefore dropped out of the case. Exhibit 2 of the Morrison record is a representative sample or samples of the cat's-eyes or tiger-eyes. Exhibit 3 was made up of representative samples of the "mat jewel stones" of various colors, which, being of garnet, medium blue, and straw colors, and referred to on page 18 of the Morrison record as including imitation garnets, aquamarines, moonstones, and topazes, seems to refer to articles still in the case and now before the court. Exhibit 4 represented the wax beads of Wolff & Co., which were covered by four entries and were the imitation pearls involved in the case. (See Morrison record, pp. 4, 5; Wolff record, pp. 1–4.) Exhibits 2, 3, and 4 are now in the custody of the marshal of the court.

An inspection of the exhibits shows that excepting the "pearls" they are all small discs of glass, flat on one side, rounded on the other, with holes through them, not cut at all, and many of them not brilliant or polished in surface, but having a rather dulled look like ground glass.

Exhibit 2—the cat's-eyes—is a string of the beads. Exhibit 3—the variegated beads—is not now a string of beads, but it is not to be deduced from that fact that the various beads of which these are samples were imported loose. In Exhibit 3 are two pale-blue beads which presumably stand for the "aquamarine," two yellowish-brown beads which so stand for the "topaz," and two pale-greenish beads which apparently are the "moonstones." The only remaining bead is of a deeper blue shade than the so-called aquamarines, and therefore there is nothing in the exhibit which remotely resembles a garnet, unless the yellowish-brown beads stand for garnets rather than for topazes.

As to the "pearls," a genuine pearl has a sort of natural enamel, and the artificial effect of such luster is more readily imitated than the brilliancy of precious stones. But it requires a distinct effort of the imagination to regard the wax beads as "pearls," and, in short, as to all these articles, the "imitation" lies chiefly in the importers' assertion (in effect) of an intent to imitate. As to Exhibits 2 and 3, certainly no one ever saw the corresponding genuine stones in such form and condition, without imitation of cutting and not *en cabochon*, and in fact there is no real correspondence or similarity.

Exhibit 5 (Morrison record, p. 18) included certain genuine stones, about which Lamont, the lapidary, a witness for the importers, testified (Morrison record, pp. 16–20), namely: Topaz, amethyst, crystal, and crocidolite or cat's-eye. It is worth noting that although Lamont testified that all the stones included in Exhibit

5 were genuine, another witness, Starke, called on behalf of the importers (p. 21), said that the cat's-eye was an imitation.

"Govt.'s Sample, Exhibit A" (p. 24), represented imitation precious stones unset, as used for making imitation jewelry and ornaments, and were further named or described on page 28 as imitation emeralds, rubies, amethysts, diamonds, topazes, and sapphires, which were cut or appeared cut or pressed or faceted; and in the opinion of the witness (Schmalhausen) this condition was universally or generally true as to such imitation precious stones, which he never knew to have holes in them or through them.

It thus appears with tolerable clearness from these records that there are involved in the Morrison case the dutiable classification of (so-called) imitation tiger-eyes or cat's-eyes (Exhibit 2), and of imitation garnets, aquamarines, moonstones, and topazes (Exhibit 3), and in the Wolff case imitation pearls (Exhibit 4). Everything else has disappeared from the controversy; the "mat jewel stones," which were loose beads, unthreaded or unstrung (see General Appraisers' decision, Morrison record, p. 3), and the black glass beads unstrung, and the glass ornaments without holes for stringing, referred to in Judge Wheeler's opinion. (Morrison record, p. 32.)

As to all the articles remaining in the case, it was found as fact by the Board of General Appraisers that they were beads made of glass, or that glass was the component material of chief value, and that they were strung on threads or cords. (Morrison record, p. 3;

Wolff record, p. 3.) And as to these articles the circuit court held (Morrison record, p. 32; Wolff record, p. 4) that "these importations are of variegated glass beads strung * * * and hollow glass beads with wax inserted, giving an appearance like pearl strung."

Now, the final point in the scope and effect of the stipulation of March 18, 1897, resides in the exclusion of paragraph 445 of the act of 1890, providing for a duty of 10 per cent on "glass beads, loose, unthreaded or unstrung"—as Judge Wheeler said, "there is no mention of beads strung"—and in the agreement that the question lay solely between paragraph 108 and paragraph 454 of that act, which are as follows:

> 108. Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem.
>
> 454. Precious stones of all kinds, cut but not set, ten per centum ad valorem; if set, and not specially provided for in this act, twenty-five per centum ad valorem. Imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem.

Judge Wheeler clearly and sensibly strikes the balance between these competing claims when he says:

> The variegated beads strung are manufactures of glass, and, as they were not specially provided for, were properly classified. The wax beads, although they may be imitations of pearls as precious stones, are not composed of glass or paste, but glass and wax, and the wax is what, if anything, constitutes

the imitation. And imitations of precious stones unset are impliedly imitations capable of being set, which these beads are not.

It is pertinent to suggest here, before examining again, as will be done in an appendix, the scientific nature and classification of the various genuine stones and the pearls imitated, that while such stones display a wide range of color and delicate variations of shade, they all present normally a well-defined and characteristic color. Practically, while the importers seek elaborately to bring out a distinguishing nomenclature and call these various bits of glass imitations of "crocidolite," "aquamarine," etc., the circuit court shortly and properly characterized them as merely "variegated glass beads" and "hollow glass beads with wax inserted."

Indeed, the importers' own invoice brings out this point, because when it said "masses of mat jewel stones, garnet, medium blue and straw," it showed that the so-called imitation precious stones, garnet, aquamarine, and topaz were colored bits of glass and could be described by colors merely, which were discriminated in a vague and general way from other shades. The "tiger-eyes" are "red" by the invoice, although the distinguishing color of the genuine stone is a peculiar and beautiful shade of brown, tending, in "cat's-eyes," to a greenish tinge. So far as the term "jewel stones" is concerned, it is shown on page 7 of the Morrison record that this is only an alternative trade name for beads. Beads are called jewels in the trade. "Jewel stones" in the invoice, therefore, is to be taken as meaning and

intended to mean beads rather than imitation precious stones.

The circuit court of appeals found that all the imitation cat's-eyes were used principally in the millinery trade for trimming or for trimming ladies' garments, and that the imitation pearls were used for necklaces or for trimming, and, all the articles having "been long commercially known as beads," and being in fact, "in both popular and commercial language," beads, held that the articles in the two Morrison importations (apparently embracing in their reasoning as well as in their conclusion the Wolff pearls) were in fact imitations of precious stones, and ignored the implication residing in the word "unset" by holding that while the Morrison importations were to be used exclusively for trimming purposes, and were not to be set into ornaments, there was no practical tariff distinction between imitations of precious stones made of glass or paste unset which are intended to be set into articles of jewelry and those imitations which are to be used as ornaments upon ladies' hats or apparel. (Morrison record, pp. 35, 36.) Finding these facts and yet holding this inconsistent view, the court conclude, perhaps with some doubt, that adequate provision seems to have been made for the articles by paragraph 454, and that therefore, being thus specially provided for, they do not fall into the general receptacle for glass articles provided by paragraph 108.

The Government argument in the case, of course, challenges this conclusion and the reasoning by which it is reached at every point. (See main Government brief.)

We think that the distinction ignored by the circuit court of appeals is practical and obvious, and not to regard it is to merge such carefully drawn tests of tariff provisions, with the reasons in the nature of the case for defining them, so that both the language and intention of the law are nullified.

II.

The second question is: *When, if at all, might the purposes for which beads were threaded or strung be held not to prevent their classification as beads loose, unthreaded, or unstrung under paragraph 445 of the tariff act of 1890?*

We contend that the inquiry thus suggested can not affect this case, because the stipulation excludes paragraph 445 from consideration. The stipulation says that the "merchandise * * * was in fact beads and was in fact threaded or strung at the time of its importation, *and was thereby excluded from classification under paragraph 445*," etc.

Nevertheless, assuming to go back of this agreement, it must be taken as settled that the importers entered into the same because it was beyond question that these beads were threaded or strung in such a way or for such purpose as to prevent their classification as beads—loose, unthreaded, or unstrung—under paragraph 445. On the oral argument the court's attention was called to the concession of opposing counsel on page 9 of the Morrison record:

> Mr. COMSTOCK. The importer concedes that they were imported upon strings, and that the claim that they were entitled to entry as beads loose, unthreaded, or unstrung is not insisted upon.

Some demur at the argument was made as to the Government's application of this concession, but with what intention or with what effect we can not understand, because the stipulation was entered in both cases and covers all the merchandise.

In the abstract, however, we answer the question of the court with the contention that, whatever the purposes for which beads may be threaded or strung, if threaded or strung they certainly are not entitled to classification as beads "loose, unthreaded, or unstrung," because the one condition is the denial and contradiction of the other, and to investigate the purposes of stringing and to find discriminations leading to the inclusion of strung beads in paragraph 445 would be to ignore the law. The record shows no definite contention as to purpose or use by the importers; their argument is, with the circuit court of appeals, that the use makes no difference; they merely indicate that there may be various uses, or rather that precious stones are sometimes perforated, but substantially hold to the ground that these articles are, in fact; irrespective of use, imitations of precious stones. Nevertheless, we are not unaware of the fact that in the Schmalhausen protests (G. A., 2961; Wolff record, p. 3) the purpose of the stringing there was said to be for "assorting or for convenience in handling or transportation." As was said, however, in a previous portion of this brief, this phrase or description of the Schmalhausen case is not, for manifest reasons, to be engrafted upon the present case; and in that decision and the one to which it refers (G. A., 1876; *In re Steiner et al.*, 66 F. R., 726) the conclusion was in favor

of the collector's assessment of duty at the rate of 60 per cent, as manufactures of glass.

Turning to G. A., 876, the importers claimed that the beads were unthreaded and unstrung, and therefore were dutiable under paragraph 445, and the finding of the board was that part of the merchandise was glass beads strung and the remainder variegated flat glass beads, known as nail-head beads, "fastened upon cards with threads to protect the edges of the beads from being broken and chipped in handling and transportation." Notwithstanding the claim of the importers that the first portion was beads intended to be unstrung after importation, the appraisers held that these were excluded from entry under paragraph 445, but also held that the nail-head beads fastened upon cards with threads were "constructively loose," and that threaded beads and strung beads, being recognized in the trade as synonymous terms, the latter portion of beads was not known commercially as strung beads.

It is not necessary to pursue this distinction, which is not so plain as to be readily conceded, because, as above shown, it is not involved in this case. To ordinary apprehension the terms "loose, unthreaded, or unstrung" seem to require a condition of the articles free from any sort of connection or attachment with any kind of strings. We are also aware that in T. D., 3995 (see p. 18 of the main Government brief), under the provision of an earlier tariff as to pearls, the board held that perforated genuine pearls "merely strung on threads" was only for convenience of transportation and did not change their essential character as pearls not set. The soundness of this

decision, too, might be questioned (although both the question and the law were different from those now under examination), and is not really germane to our inquiry, for the reason already given, although that decision has some bearing on the idea that perforation of genuine pearls for convenient transportation does not, or, rather, did not, necessarily interfere with their character as articles to be strung or otherwise made into jewelry in this country. They were pearls *not set*, perhaps, because pearls, unlike precious stones, in the past sometimes came into the country in that condition to be set. But that notion is not in accordance with recent law, which, under the three last tariff acts, permits no account of the purpose or exact condition of strung pearls. The test is whether they are "strung" or not. Indeed, the decisions show generally that the inquiry as to the purpose of the condition or form in which an importation arrives in this country is not usually allowable and is not really important.

In the case of *Worthington* v. *Robbins* (139 U. S., 337) it was agreed in a statement of facts that "if it would be competent to prove the same," the enamel in controversy was imported by the importers for use in making watch dials, and was in fact so used; but the fact appearing that it was also used for various other purposes, the court declined to classify it for duty as watch materials, since there was nothing to prevent its sale and use for purposes other than the making of watch dials. And the general principle is fairly deduced from this opinion that the classification of imports must be ascertained by

an examination of the articles themselves in the condition in which imported, and should not be referred to the proposed use, or even the actual use, among various possible uses which might be made thereof.

In another case cited in this opinion it appeared that the article in question was only known to the trade and was only used for one purpose, and apparently there were neither various forms in which it might be imported nor various purposes for which it might be used.

Again, the intention and purpose of the importer or the fitness of a certain purpose of an importation are shown not to be the proper test in the case of *Dwight* v. *Merritt* (140 U. S., 213), in which an assessment of duty on antiquated and rusty iron rails as iron bars for railroads or inclined planes was sustained as against the importer's claim that they were mere scrap iron, which it was admitted were not adapted to use as rails nor imported for any such purpose, but which were manifestly imported solely for remanufacture. The final sentence of the opinion is as follows:

> All the various questions of utility and adaptation of the merchandise imported are not supposed to enter into the decision of the collector in determining its dutiable classification, under the rule in *Worthington* v. *Robbins*.

And in *United States* v. *Schoverling* (146 U. S., 76) the intent of the importers to combine the articles in a certain way after importation was not permitted to affect the rate of duty on the articles themselves as imported. (See also *United States* v. *Potts*, 5 Cranch, 284; *Hartranft* v. *Wiegmann*, 121 U. S., 609; *Seeberger* v. *Castro*, 153 U. S., 32.)

So here the test is, Are the beads strung? Perhaps any purpose, whatever it might be, is excluded from consideration, although it is manifest that these strung beads were either manufactured trimmings and ornaments or else strung for necklaces. Certainly general allegations of the importers that the purpose might possibly be to unstring and set in the ordinary forms can not affect the proved and preponderating facts or the stipulation.

It is always to be remembered that the general appraisers found the facts in this case, as it is their function to do in all such cases; that the finding was in general agreement with their findings in similar cases down to recent decisions of the board concerning imitation pearls (see previous brief), and that the definite finding was that these articles were glass beads, manufactures of glass, and, by consequence, were neither unstrung beads nor imitations of precious stones. Upon this point the decision in *In re Steiner et al., supra*, is one of many statements of the principle ruled in this court and in Federal courts below upon the subject, namely:

> A simple question of fact is thus presented where the burden is upon the importers to prove that the importations consist of unstrung glass beads. This question of fact was tried out before the Board of Appraisers, and they have found that the articles in question are manufactures of glass and are not unstrung glass beads. As I recollect the evidence, the only testimony before the board was to the effect that these are strung beads; in fact, a mere ocular examination of them demonstrates that they are strung beads. As there is no evidence to the contrary, the

court would hardly be justified in overruling the decision of the board. If it were a disputed question of fact on evenly balanced testimony, their decision should stand, but as it is, the weight of evidence is clearly on the side of the collector.

The conclusion, then, clearly is that neither, as a general principle, may the possible purpose of making an importation be regarded as against its condition or form at the time of the importation, nor in this case (beyond question) may the possible purposes for which beads are threaded or strung be regarded at any time or under any circumstances so as not to prevent their classification as beads, loose, unthreaded, or unstrung, under paragraph 445 of the tariff act of 1890. Whatever the present condition of the representative samples or exhibits may be, the importations were *strung beads* when they were entered.

III.

The third question is: "*As respects articles which were in fact beads and which were threaded and strung, and were intended to be used for the purposes for which beads are normally used, was it the intention of Congress that such as imitated precious stones and did not exceed one inch in dimensions, and were not set, should be dutiable under paragraph 454 of the tariff act of 1890, and that such as did not imitate precious stones should be the subject of a different classification?*"

The answer to the third question must be in the negative. It involves by its terms the consideration of use or purpose. Congress surely did not mean that strung

beads intended to be used *normally* (which normal purpose or intended use is found as a fact in this case by the circuit court of appeals) should be classified differently according as they might or might not imitate precious stones, or, in the present instance, according as they might or might not roughly and crudely imitate ornamental stones which are alleged to be precious.

The statement of the proposition irresistibly brings us back to the firm conceptions of a limited and definite class of stone, a definite condition as well as size, and a definite quality of workmanship. The provisions and implications of the law are necessary and positive that the imitations should be of *precious stones;* that, the imitated precious stones should not be *beads;* that, not exceeding 1 inch in dimensions (suggesting that a larger size would pass beyond probability as to the originals imitated, and that the *character* and *quality* of the imitations were strictly conceived in the law), they shall not be set, but shall be capable of being set in the usual ways. In other words, the phrase "imitations of precious stones" is no mere general description, loosely and broadly used—bearing in mind always that to whatever extent, in the abstract, a court might regard a controlling purpose plainly shown (if not forbidden by the decisions before cited) to use otherwise than as beads, these articles were beads, were so found to be, was agreed not to be unstrung, and the normal use as beads was determined by the court below. These articles, then, being "beads" and nothing else, and the conditions of paragraph 454 withholding that classification from such of them as might possibly imitate

precious stones, because the perforation and stringing show that, while not set, they are not capable of being set, the inquiry arises, "What articles are meant by imitation precious stones in paragraph 454?"

It is a well-known fact that both precious stones and pearls are wonderfully imitated in Europe by elaborate and costly processes, and are set in coronets, rings, and other usual forms. The finest modern pastes cost a very substantial proportion of the value of genuine stones, and historic and family gems are understood rarely to appear in public, but fine paste substitutes are shown and worn instead. Nor is this art confined to imitations of the greatest jewels, but covers the field commercially, and of course includes stones within the dimensions of paragraph 454. Such are the "imitations" of the act.

But it may be sugggested that these imitation precious stones and pearls are often "set" or strung as necklaces, as the genuiue stones are, which are none the less precious stones. The court will recall that the learned opposing counsel exhibited at the hearing a beautiful necklace of genuine diamonds and sapphires. I think the reply to that suggestion is obvious. Such necklaces are strung on cords, strands, or fine chains of gold, or some other appropriate and valuable metal, but are not "set." "To set," in the jewelry sense, is restricted to the idea of framing or mounting. (See dictionaries.) Such genuine necklaces would be dutiable as "jewelry," under paragraph 452 of the act of 1890, and since that act under paragraph 336 of the act of 1894 and paragraph 434 of the act of 1897. There can be no

doubt on this point under the language of the two latter acts, and surely there can be no reasonable doubt under paragraph 452 of the act of 1890, although that paragraph taxing "jewelry" and "all articles * * * known commercially as 'jewelry,'" includes the words, "whether *set* with coral, jet, or pearls, or with diamonds, rubies, cameos, or other precious stones, or imitations thereof, or otherwise." The act of 1897, in the paragraph corresponding (435) to paragraph 454 of the act of 1890, amplifies "not set" to "not mounted or set." Certainly a necklace of genuine stones is "jewelry" and to be taxed as such, and consequently an imitation thereof is not entitled to entry as as an imitation of precious stones not set. And while such precious stones are not capable of being "set," the finished condition of a necklace as "jewelry" places such an article entirely apart from the meaning and force of the terms "set" and "not set" as applied to precious stones ordinarily, and to the imitations thereof which the law had in mind. This reasoning applies to a finished necklace of genuine pearls or to an imitation thereof. If (formerly) the string of genuine pearls was not a finished necklace, but was merely strung on horsehair or some other filament for convenience of transportation, and so the importer properly escaped classification as "beads" (Schedule M, Duties upon Imports, Rev. Stat., p. 473; T. D., 3995) and obtained classification as "pearls not set" (Rev. Stat., 480), in recent acts such a dilemma does not exist, because, under the somewhat varying expressions of the later acts, genuine pearls are taxed as jewelry when *strung* or set, and are admitted at a

lower rate in their natural state, *not strung* or set. And I know of no decision respecting pearls since the law has been in this form which holds that a stringing merely for transportation relieves from the jewelry classification. Even the distinction of the General Appraisers in the Schmalhausen case, *supra*, respecting sewing on cards, does not seem to have been applied to pearls.

The foregoing leads to the statement that imitation pearls or precious stones strung can not claim an exemption to which the genuine articles strung are not entitled, and rely upon the transportation purpose of the stringing. The importer can not in any case say, "This is not a bead *necklace;* the beads may be unstrung and be made into new and various forms, and therefore they are constructively loose;" and on that suggestion we again call attention to the agreement of the stipulation on the point.

But it is also, at all times, to be remembered that pearls are not precious stones. Not to weary the court with a repetition of the previous brief on that branch of the case, let me submit a few pertinent provisions from the last three tariff acts:

Act of 1890, paragraph 452, speaks of a setting with coral, jet, or pearls, *or* with diamonds, rubies, cameos, or other precious stones; paragraph 453, "pearls, ten per centum ad valorem;" paragraph 454, "precious stones of all kinds, cut but not set, ten per centum ad valorem." If pearls are precious stones, why was not paragraph 453 omitted? Paragraphs 337 and 338 of the act of 1894 show the same juxtaposition and contrast; and in the act of 1897 paragraph 434 provides for precious stones set, pearls set or strung; and paragraph

436 provides for pearls in their natural state not strung or set, while paragraph 435 provides for *diamonds and other precious stones* advanced in condition by cutting, etc. This suggests, further, that a precious stone must be one capable of being "cut," which a pearl is not.

I append to this brief certain material upon the scientific and artistic nature of various stones, with definitions of the terms employed, drawn from well-known authorities.

From the authorities thus given we draw the deductions that the term "precious stones" is not to be used in the loose way in which, with "gems" and "jewels," it is sometimes used, and as synonymous with those terms; that while perhaps some of the stones, imitations of which are involved in this case, such as the aquamarine and topaz, might be classified as semiprecious, no stone properly belongs to the class of precious stones except the diamond, sapphire, emerald, and ruby, which, upon the test of mineralogical characteristics, hardness, tenacity, etc., and of rarity, brilliancy, and value, are at the summit of the series of ornamental stones; that a line must be drawn, and the line just suggested is the only certain and safe one; and that if all valuable, beautiful, and ornamental stones which are not marble, building, or monumental stones, and are comparatively rare, are to be classed in tariff acts as precious stones, there is practically no limit to the articles which may come in under that head.[1] For, as fashion dictates, various inferior stones, such as verde antique,

[1] See in this connection, paragraph 115, act of 1897.

serpentine, jade, bloodstone, malachite, and lapis lazuli, which occur in extensive and massive deposits, are used not only for ornamental purposes in the form of statuary, slabs, etc., but appear frequently in jewelers' shops, set in the ordinary small and carefully worked pieces and in the shape of rings, pins, brooches, etc. Ivory and tortoise shell, as well as coral and other substances, are often classed in the list of valuable or precious articles used for gems or gem work. Amber, an anomalous "stone," like pearls, is very exactly imitated nowadays in celluloid, and doubtless also in combinations of glass similar to the beads before the court, and is used both for necklaces and set into various kinds of jewelry ornaments.

Special provision has in the recent acts been made for manufactures of amber, as well as of the other valuable articles just mentioned. But, if this were not so, would amber be a precious stone because it is prized and valuable, and should imitations of it be permitted to come in under the guise of imitations of precious stones? I think such a question must be answered in the negative; and, equally, that the imitations now before the court, which can be purchased in strings and bunches by the peck (so to speak) on the counters of dry-goods stores and notion stores, should be forbidden to masquerade under this term. The form in which such beads on strings appear, as being intended to be used, or actually used, in the condition of importation, for ornamenting dresses or hats, either by sewing on the fabrics or by being attached to them as a pendant ornament on the one hand, or by wearing as necklaces on the other, can justly make no difference; nor could an alleged intention to unstring

and refabricate make any difference, certainly none in this case, under the stipulation.

Under the act of 1883 bead forms of glass of various shapes, sizes, and colors in imitation of precious stones were returned for duty at 50 per cent under paragraph 396 of that act, whether imported loose or made into ornaments; that is, however imported, because strung beads were of course included under the broader language of that act. The later acts surrendered this claim on unstrung beads only, but, we contend, necessarily remitted strung beads to manufactures of glass, and this is so, although the act of 1883 contained no specific provision for imitation precious stones. In other words, under the succeeding acts if such imitations were pierced but loose they were beads, but specifically entitled to the lower rate of duty; whereas if pierced and strung they were not fit for use as imitation precious stones, and, being beads and manufactures of glass, were taxable under the latter head. (See G. A., 386, and especially the paragraph thereof referring to the act of 1883.)

IV.

CONCLUSION.

Finally, I beg to submit in another form a statement of what the law provides and a construction of the purposes of the provisions.

Paragraph 445 taxes beads loose, unthreaded, or unstrung. The articles before the court are not such beads in fact, as was regularly determined, and the importers by their agreement so admit. Paragraph 454

taxes, *inter alia*, imitations of precious stones composed of paste or glass not exceeding 1 inch in dimensions, not set. These are not such imitations of precious stones, as we think we have shown. They are not the imitations of precious stones which Congress by any practical and reasonable test of facts and language meant to place under this paragraph. Being manufactures of glass, and not being specially provided for in either paragraph 445 or paragraph 454 or elsewhere in the act, they must fall under the provisions of paragraph 108, however general and remote from specific reference its language may be.

Why should Congress make a difference between loose, unthreaded, or unstrung glass beads and glass beads threaded or strung? It may be suggested that two purposes were in view. In the first place, loose glass beads are in a less advanced stage of manufacture and need labor in this country. They are applicable to a wider range of uses. Glass beads strung, and especially glass beads strung as these were, ready for application to their trimming uses at once, are in their completed form of manufacture, and in all cases have a pretty certain destination of use. In this case there is no doubt about that destination. The use is one which, being for personal adornment, falls within the list of luxuries, however moderate and inexpensive a member of that list they may be. Therefore in the difference of taxation Congress had in mind two well-defined principles—the interests of labor in this country and the propriety of a higher taxation on articles of plain and well-defined use for the ornamental and luxurious side of life.

If the learned counsel again calls attention to the claim that the preponderance of the record evidence is in favor of the importers, we respectfully refer the court on that point to our previous brief, showing, we think, that this preponderance is apparent rather than real, depending partly on a witness whose reliability is far from assured, and showing also that the question is largely an abstract one which is not wholly dependent upon the record.

We therefore respectfully submit that these "small brown beads," "variegated glass beads," "glass and wax beads," "hollow glass beads, with wax inserted," all of them strung, are not entitled to classification as imitations of precious stones, but should be held to be dutiable at the rate of 60 per cent ad valorem, as manufactures of glass, under paragraph 108 of the act of 1890.

We respectfully submit that the decision of the circuit court of appeals should be reversed, and the decision of the circuit court sustaining the decision of the Board of Appraisers and the collector should be reinstated and affirmed.

HENRY M. HOYT,
Assistant Attorney-General.

APPENDIX.

Definitions; scientific and artistic authorities.

It is desirable to make the inquiry concerning the nature of the corresponding genuine stones thorough, and accordingly I give here an abstract of dictionary and encyclopædia references thereto.

1. (*a*). The Standard Dictionary, not containing the term cat's-eye, speaks of crocidolite generally as a hydrous silicate—fibrous, silky, and blue or green in color, and adds: "2. A yellow alteration product of this silicate used as a gem stone. Called also tiger-eye."

(*b*). The *Century* says, *sub nomine* "cat's-eye":

> 1. A variety of quartz, very hard and semitransparent, and from certain points exhibiting a yellowish opalescent radiation or chatoyant appearance, whence the name. ["Chatoyant. * * * I. Changing in luster or color, like a cat's-eye in the dark. * * * II. A kind of hard stone or gem having, when cut and polished, a chatoyant luster; cat's-eye."] Also called sunstone. The same name is also given to other gems exhibiting like chatoyant effects, more especially to chrysoberyl, which is sometimes called the true cat's-eye.

Under the word *crocidolite* the *Century* says:

> * * * A mineral consisting principally of silicate of iron and sodium, occurring in asbestos-like

fibers of a delicate blue color, and also massive. * * * Also called blue asbestos. The name is also given to a siliceous mineral (tiger-eye) of beautiful yellow color and fibrous structure, much used for ornament, which has resulted from the natural alteration of the original blue crocidolite of South Africa.

A beautiful series of the * * * so-called crocidolite cat's-eyes (also called tiger's-eyes) * * * really a combination of crocidolite fibers coated with quartz. This encasing renders it harder than unaltered crocidolite. (Pop. Sci. Mo., XXVIII, 828.)

2. The *Century* says that aquamarine is "the finest beryl, so called from its bluish or sea-green tint;" and under the heading *beryl*, "a colorless, bluish, pinkish, yellow, or more commonly green mineral, occurring in hexagonal prisms. The precious emerald is a variety which owes its beauty of color to the presence of a small amount of chromium. See *emerald*. Aquamarine is a pale-green transparent variety, also used as a gem, though not highly prized. Beryl is a silicate of aluminium and beryllium." * * *

The *Standard* defines aquamarine as a bluish or greenish variety of precious beryl, and beryl as a vitreous to resinous mineral of different colors. "When transparent it is used as a precious stone. Aquamarine and emerald are gem varieties."

3. Garnets include many varieties, the aluminum garnets with various subdivisions, the iron garnets and the chromium garnets, and some of all these varieties are cut as gems, the lighter and clearer ones being called hyacinths, the yellowish and reddish, jacinths, and the deep, clear red, precious garnets, the latter being called carbuncles when cut *en cabochon*. This is an abstract from the *Standard* on the word.

The *Century* speaks of it as "a common mineral species

embracing many varieties which * * * differ in composition and hence also in color, specific gravity, and fusibility." "Garnets are commonly found in gneiss, mica schist, granite, and hornblende rocks," "in distinct embedded crystals belonging to the isometric system." "The precious garnet is transparent and deep red, * * * and is prized as a gem." * * *

4. *Moonstone.* *Century:* "A variety of feldspar, which, by reflected light, presents a delicate pearly play of color. * * * It is often cut and used for ornamental purposes." *Standard:* "A whitish chatoyant feldspar * * * valued as a gem stone."

5. *Topaz.* *Century:* "A mineral of a vitreous luster, transparent or translucent, sometimes colorless, often of a yellow, white, green, or pale blue color." *Standard:* "A transparent to translucent, usually white to yellow * * * aluminum fluosilicate."

6. The definitions of *pearl* in both dictionaries refer to its marine and animal origin and to its chemical nature, consisting chiefly of calcium carbonate. The *Century* dictionary shows that the range of color is very great, from the satiny and silvery white tint, which is most desired, through gray, pink, yellow, purple, and smoky brown to black.

It will be worth while also to examine the definitions of the three terms, *gem*, *jewel*, and *precious stone*, which are often used as synonymous terms, and learn whether they are not, however, capable of practical and exact discriminations.

> (*Standard.*) "*Gem:* A precious stone usually when cut and finished ready for wearing or setting as an ornament, as the diamond, ruby, and sapphire; a jewel. *Gem stone:* A precious stone; a mineral suitable for cutting as a gem."
>
> (*Century.*) "*Gem:* 2. A precious stone of any kind, as the diamond, ruby, topaz, emerald, etc.; especially

when cut and polished for ornamental purposes; a jewel. *Gem stone:* A precious stone; a gem.

"Jewel: A precious stone or gem; especially a gem cut and shaped for ornament or use, as the *jewels* of a crown." (*Century.*)

This is the primary definition, and the subordinate ones regard any piece of jewel work, like a bracelet or a brooch, or any ornament like the decoration of an honorary order, and the stones used in watch making, and the projecting bosses in colored-glass windows, as jewels, beside the metaphorical use of the term.

"A precious stone fashioned for use or beauty; a gem, especially one set in precious metal for personal adornment.

"Precious Pearles and *Jewels* and farre more precious Truth are found in muddy shells and places. (Roger Williams * * *)" (*Standard.*)

Under the adjective *precious* in the *Century*, *precious stone* is defined as "a stone distinguished for its beauty and rarity and prized for use in ornamentation, especially in jewelry; a gem; a jewel." The definition quotes from Mr. Kunz's book entitled Gems and Precious Stones of North America, as follows:

Beauty of color, hardness, and rarity are the essential qualities which entitle a mineral to be called precious. Strictly speaking, the only precious stones are the diamond, ruby, sapphire, and emerald, though the term is often extended to the opal, notwithstanding its lack of hardness, and to the pearl, which is not a mineral, but strictly an animal product.

It may be suggested here that the case is something like that of precious metals, in which, as is shown by the *Century* in the same paragraph, upon the metal test of

precious in reference to standard of value and coinage only gold and silver strictly are precious metals, although there are more valuable metals, and the term is sometimes extended even in practical affairs to platinum and mercury. So in the case of stones, not every stone which is beautiful and valuable and somwhat rare and used for ornamentation should be called a precious stone; only the top members of the series by all these tests and the additional tests, such as purity, brilliancy, and hardness, should be so included.

The *Standard* does not define precious stone, but refers to the title *Stone*, where appears a list of precious and ornamental stones, and among other abbreviated explanations the letter P stands for precious stones and S for semiprecious stones. The only varieties marked as "precious" in this table are the following: The alexandrite variety of chrysoberyl, the diamond, the emerald, the opal, the ruby, the sapphire, and the turquoise; while the beryl and cat's-eye, the garnet—both carbuncles and the pyrope variety (the most valuable)—the aquamarine and the moonstone and topaz are entered as semiprecious. The pearl is not included at all, and certain inferior quartzes like agate, and anomalous articles like amber, are entered as gem stones, while crocidolite, along with Mexican onyx, tiger's-eye, and alabaster are noted as ornamental stones.

The fluctuating or inexact use of the three terms "gem," "jewel," and "precious stone," which are roughly synonymous in common speech, is shown by a reference to the article Gems in the Encyclopædia Britannica, from which it is evident that the word originally and properly refers to stones, including inferior materials which were cut, not as more commonly in modern times by facets similar to the natural angles in crystallography, but by engraving of seals in the form of diesinking, and later in figures and designs in low relief. The Egyptian scarab and the

intaglio and cameo were gems, and the materials of all the ancient nations ranged from jasper and agate to alabaster, quartz, and glazed clay. It seems that there was a progressive development of the art and an improvement ultimately in the materials selected, although during the period of excellency in Greece the material is of indifferent quality, just as in the older specimens, brilliant color and translucency not being then a necessary element, and the design being worked out solely with a view to its own artistic merit. Indeed, the plate accompanying the article shows that many of these gems were engraved on ancient pastes.

The article on "Mineralogy" of the Encyclopædia Britannica further illustrates the contention that not every rare, beautiful, and valuable stone is to be regarded as a precious stone, and a changing range of colors appears by which, while each stone has its normal or characteristic color, many of the varieties pass through the whole chromatic range. For instance, under the oxides of metals appears (Encyc. Brit., 9th ed., vol. 16, p. 386) the spinel and balas ruby, which are often sold as the true ruby, but are not so valuable, one of a certain size being half the price of a diamond of that size. There is a violet-colored member of the division and also one that is orange red. Associates in the group, like sapphirine and the others named, are sapphire blue, greenish or reddish blue, bluish black, grass green, and colorless. On the same page the chrysoberyl is spoken of as a very desirable gem, and when chatoyant (oriental chrysolite) is of extreme value. I suggest, however, that this is by no means to be confounded with the ordinary cat's-eye or tiger-eye. Under the quartzes (p. 389) the varieties include rock crystal, amethyst, and cairngorm stone, which are valued as ornamental stones. "Those which follow are less so." And then follow among others the "cat's-eye, inclosing asbestus." Among the common quartzes

are some impure varieties which are properly rocks, and included in these is the jasper; while "other siliceous minerals seem intimate mixtures of quartz and opal, as * * * chalcedony, carnelian * * * chrysoprase, apple-green, * * * moss agate * * * (called bloodstone when sprinkled with deep red spots). Among the impure marbles (p. 397) is verde antique mixed with green serpentine, and malachite is described on page 399; "the finer varieties are prized for ornamental purposes." The turquoise, page 405 (given as precious in the Standard Dictionary list), "is valued as an ornamental stone, but is destroyed by oil and deteriorated by soap." The finest topazes (page 408) are the blue * * * the pink, the yellow * * * and the colorless." The tourmaline (a stone which is prized, but certainly not precious) has (p. 409) "crystals, ruby red within, surrounded by green or red at one extremity and green at the other, also blue and pink;" while the euclase (id.), although "transparent, splendent, vitreous," and of various shades, and not affected by acids, can not be used as a gem on account of its brittlenesss. The garnet group is described on page 411 and the important varieties distinguished, but nothing said of its value in the gem character further than statements that one variety when polished is called the hyacinth and the red varieties when cut *en cabochon* are termed carbuncles. There is a "noble serpentine" (p. 414), and serpentine "forms whole rocks and mountains and is manufactured into various ornamental articles." Under the title of *emerald* on page 418 appears, beside that precious stone, the beryl or aquamarine, "colorless or less brilliant" than emerald, and the common beryl, with the remark that emerald and beryl are much valued as precious stones.

Under the feldspar group (p. 419) it is said that "the adularia or moonstone and the green amazon stone are cut as ornamental stones."

I may add that in this list under the mineral resins appears amber, which (something like the animal pearl, though the latter does not appear in the encyclopedia's article on mineralogy) is by a sort of anomaly classed among minerals, although it is derived "chiefly from an extinct coniferous tree and found in the * * * diluvial formations of many countries." The encyclopedia article is followed by an index of mineral species (p. 429) for convenience of reference.

Leisure Hours Among the Gems, by Augustus C. Hamlin, fellow of the American Association for the Advancement of Science, member of the Royal Society of Antiquaries of Northern Europe, etc., Boston, James R. Osgood & Co., 1884, contains four sections, as shown by the table of contents, devoted only to the diamond, the emerald, the opal, and the sapphire. It appears that the ruby is really a red sapphire (p. 407 et seq.; p. 425), and that often stones of inferior material, like corundum, tourmaline, or spinel, when of fine hues of red, are classed as rubies or red sapphires. Page 406 contains the following sentence, which illustrates certain of the statements previously made in this brief: "This celestial jewel was formed of green jade stones of delicate color, perforated and strung upon a cord, to the center of which was attached a monster red stone of the nature of which we were not informed."

On the other hand, in Castellani's book, Gems, London, Bell & Daldy, 1871, he gives a long list of valuable and ornamental stones, seems to distinguish the four most precious stones as *oriental* gems, and by the seven well-defined tests of quality gives a list of eighteen, which includes not only the first four members, but the pearl, garnet, and aquamarine. The topaz will perhaps fall under the heading chrysolite (pp. 14, 15, 68, 215). And on pages 142 and 152 he refers to the moonstone and the cat's-eye. In the epilogue (p. 240) he

speaks of amber as among precious substances belonging to the vegetable kingdom, which are used ornamentally, and ivory, coral, and pearl as belonging to the animal kingdom and so used.

(Cf. Dana's Text Book of Mineralogy, ed. of 1898, under "Index of Species," p. 579, "garnet," "moonstone," "topaz," etc.)

I have already referred *ante* to the definition of precious stone on page 310 of Mr. Kunz's book, Gems and Precious Stones of North America: New York, Scientific Publishing Company, 1892. The chapter in which that occurs begins with the question, What is a precious stone? and mentions the shifting standard due to the caprice of fashion. Following the definition he says:

> Popularly, a gem is a precious or semiprecious stone, especially when cut or polished for ornamental purposes. Mineralogically, the term * * * includes the semiprecious or fancy stones, such as the chrysoberyls, alexandrites, tourmalines, spinel, and topaz. Archæologically, the term is restricted to engraved stones, such as intaglios and cameos. The term jewel is applied to a gem only after it has been mounted.

He gives the epithet "phenomenal" to those stones which, like the opal, moonstone, and cat's-eye, exhibit a play of color or show a line or band of light, and notes that public interest in semiprecious stones has greatly increased during recent years. (Id., p. 311.)

[End of Appendix.]

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Filed May 6, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

E. A. MORRISON & SON

vs

THE UNITED STATES

Brief in opposition to the application for writ of certiorari.

If it is desirable in any instance to deny a motion such as that of the Solicitor General, it should certainly be denied in the present case (and that of Wolff, in which he also applies for the writ). And this Court has determined that it is sometimes proper, for a like application by the Attorney General was denied in the case of Merck & Co, as to duty on elaterium,—and we believe, in other cases.

This case involves no constitutional question, no question of general or far-reaching application, no conflict between decisions at different circuits, and no large amount of duties in dispute. The statement of the treasury officials as to the sum involved, reported

by the Solicitor General in his opening paragraphs, involves a grotesque distortion of the facts, and the Secretary has evidently been egregiously misinformed by some subordinate. Counsel for the appellants (below) have this entire contest in their hands, *and would gladly sign satisfaction in full upon every protest on the point for $5000.*

It is a mistake to state that the same or similar questions have arisen under cognate provisions of the Act of 1894. The best proof of this is that the rate of duty provided by the later act is precisely the same on all glass beads, loose or strung, as on imitations of precious stones, and the same as the rate contended for in the present cases. The issue dropped dead at once upon the taking effect of the Act of 1894.

The issue here involved is as to certain (and not all) strung glass beads. These, although not strung to advance them toward any manufacture, but simply for convenient carriage, were omitted from the bead paragraph in the law of 1890, which designated merely such beads as were loose, leaving all others to find their dutiable character elsewhere. The particular beads in suit were of a character imitating various precious stones, were composed of glass or paste, and were not over one inch in dimensions. Although strung, they were not set, but were intended to be set (Record, Morrison—p. 28, ff. 83–84—p. 39 f. 116)

Hence paragraph 454 of the law gave a precise description of them; a description from which many other strung beads would be in turn excluded,—such as were over an inch in dimensions, such as were not composed of glass or paste, and such as did not imitate precious stones.

In view of these circumstances it would have been strange indeed if the Circuit Court of Appeals had sustained the ruling of the lower tribunals that these articles should find their identification in the catch-all clause of the glass schedule, as "manufactures of

glass *not specially provided for in this act.*" And it may be mentioned that the decision of one of those tribunals,—the board of general appraisers,—was rendered without any evidence, and was a mere "fluke", and that the same board, without awaiting the decision of any court in these cases, sustained precisely similar protests in a number of other instances, on full evidence and consideration See S. 13347—S. 17504.

The fact that beads when strung were omitted from one provision of the law at a ten per cent duty, involved no repugnancy to their being admitted under another provision at the same rate, since that other amply and precisely covered them.

U. S. vs. Bennet, 26 U. S. Appeals, 535.

To the Solicitor General's suggestion that "the question is whether the known commercial designation determines the classification", the palpable answer is that if such designation be "beads," that term is not found in the law,—but only "loose beads", which these articles are not. The same difficulty exists as to the term "jewels." But if the designation be "imitations of precious stones" (which we think amply established on the proofs) then both designation and description support the ruling sought to be reviewed. If the commercial designation be one not used in the law, we must look to other means of identification, for no case ever yet held that a commercial name not found in the law can settle the question of duty.

The suggestion that these particular imitations of precious stones, as being used for trimmings, are excluded from paragraph 454 which provides only for articles used for setting in jewelry, involves two entirely baseless assumptions. The record shows clearly that both these and all other such imitations are used both for ornaments of a jewelry nature, and for general trimming purposes (see pp. 29, 34, 35, 43). And

that these imitations are intended for setting is equally well proven (see p. 28, ff. 83-84, p. 39, f. 116).

We think this is in every respect just such a decision as this Court should *not* consent to review; an ordinary routine decision on simple provisions of the law,—conflicting with nothing,—of very limited importance,—and palpably correct.

ALBERT COMSTOCK,
Counsel for Appellants.

COMSTOCK & BROWN,
Attorneys.

[redacted]

Supreme Court of the United States.

THE UNITED STATES, PETITIONER, vs. E. A. MORRISON & SON, *and* SAME PETITIONER, vs. H. WOLFF & CO.	No. 73 No. 74

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS.

It is regrettable that this court should be required to consider cases involving no disputed principle of law, nor any question of fact of public interest. The issue which the Attorney General by his prayer has brought here, concerns not constitutional questions, treaties, nor disputes between States, but the precise form of words used by mercantile witnesses, the appearance of samples of merchandise, and such trite principles of law, only, as that the terms of tariff acts are to be applied according to their established commercial meanings.

That our opponent should have consented to ask for review of such cases, invites explanation, and this seems to be at hand in a wide misconception by him

of the facts and proofs contained in the record. Were these as he has been led to suppose, there might be some question whether the law had been soundly applied in the appellate court below; on the record *as it is*, there can be no such doubt.

But little argument will be needed when the proven facts are precisely set forth, but it is essential that this be thoroughly done.

The Facts, and Mistakes as to these in the Opposing Brief.

1

The articles in issue are pieces of glass in bead form, variously colored and treated, imitating catseyes, topaz, garnets, aquamarines, moonstones and pearls, and represented by Exhibits 2, 3 and 4.

Mr. Hoyt is completely in error in supposing (brief, p. 7) that Exhibit 3 is out of the case, having been decided in the importers' favor by the general appraisers. On page 3, record, such a decision was made, but on certain items contained in one parcel only, and expressly on the ground that, being loose, these were dutiable under paragraph 445,—one of the grounds set up in the protests. On page 4, record, Exhibit 3 was put in evidence in the circuit court, on the importers' appeal from the adverse part of the general appraisers' decision, and proven to represent items on two invoices, which were in fact strung and thus excluded from paragraph 445, and were in fact assessed with duty at 60 per cent., under paragraph 108. Had the importers already won on these items, naturally they would not have offered testimony concerning them on their own appeal.

Yet under his misapprehension our opponent (p. 7) concedes that these cheap, pierced, bead imitations of topaz, moonstone etc., were dutiable as imitations of

precious stones, not set, and in view of this concession is forced to argue (p. 16) that while drilling topaz and moonstones does not remove them from recognition as precious stones, the result would be otherwise as to pearls and catseyes.

2

As to the articles represented by Exhibits 2, 3 and 4, no claim intentionally made has been abandoned or "not insisted on," as supposed by our opponent (p. 8). The claim in the protests for assessment as loose beads, under paragraph 445, was perfectly valid as to the specific items on which the general appraisers sustained such claim, and was thereby satisfied. Of the main claim, applicable to the items now in controversy, the board took no notice whatever.

3

The imitation pearls (Exhibit 4) are not made of glass and wax, but of glass with an inside coating of some substance produced from fish scales, to give a nacreous lustre to the glass. Our opponent (p. 8) quotes the assertion of the circuit judge, who found that they were of glass and wax, but was without a scintilla of evidence in so finding. The appeal to the circuit court of appeals rested in part on this and other inadvertences of the circuit judge, and they were by said court corrected (See page 35, record). Our opponent has been misled, perhaps, by the undoubted fact that the articles are known as wax pearls, but this seems to be from their having at first, years ago, been lined with wax (p. 24, record). Those in suit are lined with "a fish scale, melted" (p. 26). They were assessed with duty as unenumerated manufactures of glass, under paragraph 108 (Wolff record, p. 2) and *if they were enough composed of glass for that they were also enough so to be within a provision for imitation*

stones "composed of glass or paste," as in paragraph 454.

4

All of the Exhibits, 2, 3 and 4, were such as can be set and are constantly set.

Concerning this, our opponent (p. 9) falls into another of the errors of the circuit judge, whose language he quotes, and assumes that it followed the proofs. But the contrary is the fact, as shown by the unchallenged evidence of a lapidary and dealer in real and imitation precious stones, who testified (record, p. 20):

"Q. Are those [Exhibits 2 and 3] of a character or quality sufficiently good to warrant their being mounted as jewelry?

A. I have seen them mounted."

And of a dealer in and user of these articles, who testified (record, pp. 24–25):

"Q. Do you set them; is that part of your business?

A. Yes, sir."

And again (p. 27):

"Q. You testified that one of the articles in Exhibit A which counsel for the Government selected and showed you, illustrated the way those things were set; tell me how they were set when they have two little holes through them, like Exhibits 2, 3 and 4?

A. Same way; or with clamps which cover the holes."

"Q. Do you testify here that you have ever seen any articles likes these in Exhibit 3 set?

A. Yes, sir; set them every day."

No other evidence in the record bears nearly or remotely on this question of fact.

And in General.

The foregoing are particular facts on which our opponent has misapprehended the state of the record; he has also vitally mistaken its general tenor, as shown by the abstract of it on his pp. 3 to 7, and by subsequent references in the argument. The evidence, fully read, is found not "incomplete and unsatisfactory," but full, clear and convincing.

To demonstrate this we append an analysis of the testimony on every material point.

1. The articles in suit were, prior to 1890 (and are now) definitely, generally and uniformly regarded by dealers in them as imitations of precious stones. This is fully affirmed by 7 witnesses, and partially denied by 3.*

2. The articles in suit actually imitate precious stones, and this fact gives them their use and their mercantile value. Affirmed by 8 witnesses; denied by none.†

3. Those who regard them as imitations of precious stones include not only dealers in *them*, but dealers in real precious stones (*Vide* Lamont, pp. 19–20, and Starke, p. 22, record. No conflicting testimony as to this).

4. All the stones imitated are commercially classed

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* Affirmed: Kahn, folio 10; Foeppel, ff. 17–18; Heumann, f. 22; Lamont, ff. 26–28; Starke, f. 32; Veith, ff. 35–36–39; Schloss, f. 43.

Denied: Schmalhausen, f. 40, as to Exhibit 4 only; Hertz, f. 44, as to Exhibit 4 only; Wilcox, f. 45, as to Exhibit 3 only.

† Affirmed: Kahn, ff. 9–10; Baldwin, ff. 12–14, Foeppel, f. 17; Heumann, ff. 20–22; Starke, f. 31; Veith, ff. 33–34; Schmalhausen, f. 41; Schloss, f. 43.

as precious stones. This is affirmed by the two dealers in precious stones, Lamont, pp. 18–19, and Starke, pp. 21–22, and is denied by no one.

5. Beads of precious stones are a common form of such stones, and are not commercially excluded from, but always included among, the class known under that name. This is affirmed by two competent witnesses (see record, pp. 16–19, ff. 23–27, & p. 21, f. 30) and denied by no one. Our opponent's comment (p. 17) on the "ordinary condition of unset stones" ignores this unanimous testimony, and is without force.

6. The articles are all composed of glass or paste, and are within one inch in dimensions. We have already dwelt on the proof as to components of the pearls, and may add that all the exhibits were assessed by the collector as manufactures of glass. Further proof as to that was therefore uncalled for and was not taken. The exhibits show their own size.

7. All the articles are "not set." The testimony that they are such as may become set, has already been cited, and is unchallenged.

8. The articles are all beads, strung, and, like all imitations of precious stones, are more often termed "jewels" in the trade than by the longer equivalent name. These being facts asserted in the opposing brief, citations of the testimony are superfluous.

Thus the proofs show, either by unanimous or by greatly preponderant testimony, that we are concerned with glass or paste articles known and recognized in trade as imitation precious stones or as jewels, actually imitating various members of the class of precious stones, in one of their ordinary shapes and conditions, not exceeding one inch in dimensions, and not set but such as are to be set. And this evidence was brought out from the witnesses called by the Government as

well as from those of the importers. Only one witness who had dealt in any of these articles (Schmalhausen) sought to discriminate them from imitation precious stones as known in trade, and his view (record, pp. 27–29) is so untenable that we strongly invite the attention of this court to it.

ARGUMENT.

On these amply proven facts, there can be little occasion for argument to demonstrate the correctness of the decisions under review. Our opponent shows an inclination to turn from the record and argue the cases in the abstract, or upon alleged evidence not here, but *said to be* in the possession of the general appraisers. This court has expressed its determination not to decide one case upon evidence taken in another.

> Seeberger vs. Schlesinger, 152 U. S. 581–585,

and we do not think it will have any greater inclination to follow such as our opponent refers to. But with his abstract argument as to the meaning of the term "precious stones" as employed in the tariff act, we must join issue, and, premising that we do not concede its relevancy to these cases, since (1) the record shows without dispute that all the stones whose imitations are herein concerned are commercially accepted as precious stones, and (2) the question is not whether the articles in controversy imitate any actual or commercial precious stones, but whether they themselves are things which are accepted commercially as "imitations of precious stones",—we say that the term "precious stones" includes every substance imitated by the articles in suit, according to the received import of words in common parlance, according to well settled commercial understanding, according to numerous decisions of the federal courts, according to a long

course of construction by department and appraising officials, and according to a conclusive definition by repeated legislative enactment.

"Precious Stones" in Common Parlance.

Our opponent has found in Revelations a discrimination between "pearls" and "precious stones," and another in "Pilgrim's Progress," and on the authority of these and one modern dictionary he contends that nothing but diamonds, emeralds, rubies and sapphires are precious stones. The same chapter of Revelations which he cites, makes an equally clear discrimination between "beasts, and sheep, and horses," and chapter XX describes "pure gold, as it were of transparent glass". "Pilgrim's Progress," in the part cited, refers to pearls as "worth digging for."

The commonest meaning of "precious stones" clearly involves a comparison with stones in general, and the discrimination of those relatively rare, beautiful and costly. All such stones as are employed in minute pieces for personal ornament are in this sense precious stones. This agrees closely with the primary definitions of the dictionaries. Thus:

Century. "A stone distinguished for its beauty and rarity, and prized for use in ornamentation, especially in jewelry; a gem; a jewel".

Standard. *Precious:* "Specifically said of gems" (No definition of "precious stone")

Jewel: "A precious stone fashioned for use or beauty; a gem"

Gem: "A precious stone; a jewel".

Webster. *Precious:* "Of great price; costly; as, a precious stone"

Precious stones: "Jewels."

Worcester. *Precious:* "Of great price; costly."

Gem: "A precious stone used for ornamental purposes; a jewel."

Jewel: "A precious stone; a gem."

It is to be noted that by all these authorities the terms "precious stone," "gem" and "jewel" are interchangeably used.

There is want of unanimity among the authorities in their enumeration of the several precious stones. Of those cited in the opposing brief "Pilgrim's Progress" implies the exclusion of the pearl. The Century dictionary admits the pearl by a sort of common usage. Revelations, the oldest of all, enumerates (Chapter XXI) a long list, including sapphire, jasper, chalcedony, sardonyx, topaz, beryl, amethyst etc., all of which our opponent would exclude. Dr. Johnson, in his English dictionary, discusses the scientific nature of *pearls*,—"though esteemed of the number of gems by our jewelers." A careful study of the modern authorities, more acceptable on such a question than the scriptures or 17th century literature, shows that the following are, by some or all the writers, classified under the interchangeable terms: "precious stones", "gems" or "jewels", viz: Agate, Aquamarine, Beryl, Bloodstone, Catseye, Chrysoberyl, Garnet, Moonstone, Opal, Pearl, Sardonyx, Tiger-eye, Topaz, Tourmaline, Turquoise, as also are doubtless others not looked for. Meanwhile there is scarcely one as to which all the authorities are agreed. And as the broad scope of the term best effects the reasonable meaning, there seems no doubt it should prevail. As to occult scientific objections, such as that the pearl is not truly a stone, but a limy accretion, they are not relevant, for this court has determined that customs officers are not to be concerned with occult scientific facts or tests, differing from popular ones.

Lutz vs. Magone, 153 U. S. 105.

"Precious Stones" Commercially.

We have shown *(supra)* that by the undisputed testimony of two competent witnesses, all the articles imitated by those in controversy are accepted members of the class of precious stones as known in trade. Our opponent suggests (brief, pp 9-foot-10) that three Government witnesses "substantially denied all these statements," but this is an absolute mistake. Certain witnesses (record, pp. 30-32) who knew nothing about precious stones, stated the names by which they knew the "wax pearls" and "imitation jewels," but this does not touch or approach the point under discussion, nor has the record anything nearer. The allusions of our opponent to some recent decisions of the general appraisers, and to evidence alleged to have been taken by them, might safely be ignored, but we wish to point out that these decisions have all been made by one member of the board, who has been in opposition to the decisions of the courts on this issue for several years, as well as to the views of his colleagues, as is hereinafter pointed out.

There is nothing in the record to oppose the testimony on behalf of the importers as to what are precious stones commercially, and the undisputed evidence of two witnesses establishes the fact as fully as could a hundred.

Robinson vs. U. S., 13 Wall. 363.

"Precious Stones" under the Decisions of the Federal Courts.

The case of *Hahn vs. Erhardt, 46 Fed. Rep. 519*, was tried in the U. S. Circuit Court in the Southern district of New York in 1891. It involved pieces of agate and tigereye stone, shaped into handles for penholders, glove hooks, etc., for which entry was claimed at the

rate provided for precious stones in the law of 1883. A verdict was directed for the plaintiff, the circuit judge saying:

> "These articles would, in ordinary speech, it seems to me, be clearly included within the broad meaning of the term 'precious stones.' What testimony there is here as to how the trade regards them also shows that in trade and commerce in this country they are considered 'precious stones.'" [And, after reviewing the statutes]: "the phrase 'precious stones of all kinds', when used in this act of 1883, is broad enough to cover stones which may sometimes be called 'semi-precious stones', and which are of the class which, in the broad use of the term 'precious stones' is by the community at large regarded as comprised in that family."

In *Erhardt vs. Hahn*, 55 *Fed. Rep.* 273, the circuit court of appeals reversed the above decision (in 1893), solely on the ground that such things as penholder handles made from precious stones, were not describable as stones, precious or otherwise. The court said (p. 275):

> "Undoubtedly agate stones and tiger eye stones are 'precious stones' within the common acceptation of the term; certainly some varieties of them are; and of course they were known in trade and commerce, as to the lexicographers, by that generic term."

The court then pointed the distinction between mere stones, either crude or cut, polished, etc., and useful articles made therefrom.

In 1895, the same court decided the case of *U. S. vs. Popper*, 26 *U. S. Appeals* 509, which involved glass imitations of precious stones imported under the act of

1883. The provision of that law for such articles was less clear than in later laws, being for "compositions of glass or paste, when not set," but the court held that it was equivalent to the clause invoked in the present cases. The transcript shows that the articles in suit were colored glass disks of various sizes, imitating opals, crystals, diamonds, amaranths, aquamarines, rubies and topaz, were used for ornamenting stoves, lanterns etc., and were known in trade as "jewels." These the court ruled were within the enumeration of the clause cited by the importer, and were more aptly and specifically provided for there than in that for "articles of glass, cut, colored" etc. in the same law, under which duty had been assessed.

In this Popper case the appellate court had before it the ruling of General Appraiser Tichenor, from which appeal was taken, and who is the member of the board whose recent rulings are dwelt on and commended in the opposing brief. At that early day, in the first year of the board's existence, we find him asserting (see G. A. 601, on whose authority Popper's protests were overruled by the board) that the provision for compositions of glass or paste, not set, was to be applied only to articles "of smaller size, and of better quality and finish generally." This view was therefore negatived in the Popper decision.

Until the present cases, the courts rendered no further reported decisions involving a conclusion as to what were precious stones.

"Precious Stones" under Executive Construction and Practice.

For a quarter century, from 1875 to the present day, the treasury department and the general appraisers have so ruled as to establish the broadest meaning for the tariff term "precious stones." But while these

rulings have been rendered by various assistant secretaries and various members of the board of appraisers, Mr. Tichenor, in each capacity, has persistently adhered to the view which the courts have so often overruled. Thus we cite:

S. 2153 (1875) Stones of Bohemian glass, cut and colored, recognized as imitations of precious stones, although held elsewhere dutiable.

S. 5258 (1882) Glass stones of *pure black color* described as "like precious stones." Being black, they could not have been like any of the four stones which our opponent thinks are alone precious.

S. 8608 (1888) Garnets held to be precious stones.

S. 9077 and 9152 (1888) were to like effect.

None of these decisions, however, were by Mr. Tichenor, but he ruled, in 1889, while assistant secretary (S. 9523), that if colored glass imitations were covered by the provision for compositions not set, they were also covered by that for articles of glass, colored, cut, etc., and hence dutiable at the higher rate there provided;—a view which was squarely overruled as bad law in the Popper case.

In 1890 the general appraisers succeeded to the department's function of ruling on protests, subject to review in the courts. Mr Tichenor came from the treasury to the board, and the record shows that he has adhered to his former view on this issue, in opposition to his colleagues and undeterred by the repeated decisions of the courts. Thus, in decisions 13347, 13350, 13377, 14218, 14390, 15849, 15975 etc, general appraisers Sharpe, Wilkinson, Sharretts and others have consistently ruled that pearls, opals, garnets, crystals, agates and aquamarines were precious stones, whether in bead form or other usual forms. Usually the treasury accepted these decisions without appeal; in the one or two cases where to our knowledge appeal was taken, the decisions were confirmed without opinion. It is regarded as settled law.

Meanwhile, in decisions 11242, 12654, 19449, 19458 and many others, Mr. Tichenor has maintained his adverse view, opposing all his colleagues and seemingly ignoring the decisions of the courts.

The executive decisions cited in the opposing brief, other than such as we have already referred to, prove irrelevant on examination, except the group of recent decisions under the new law. The others are mostly concerned with protests in which no claim was made for entry under paragraph 454. Several of them overruled the claim that "wax pearls" were dutiable as manufactures of wax, because analysis showed them to contain no wax (See G. A. 568, 644, 936, 2961). Others sustained a claim that beads, unstrung, imitating precious stones, were dutiable as loose beads,—a conclusion not at all in conflict with the decisions now under review (See G. A. 386,—and see treasury decision No. 9214). Others again, sustained duties as assessed, no ground of dissatisfaction being set up in the protests (See G. A. 974). Many of these decisions must have been hastily read and misconceived by our opponent.

As to the group of recent decisions (G. A. 4164, 4166, 4175, 4186, 4418) to which the opposing brief devotes much attention (pp. 13–14), it is enough to say that they do involve any case here for review, nor any law now under discussion; that the alleged evidence on which they were based is also not here; that if it were here it would be found to consist in large part of testimony from an examiner in the local appraiser's office and of evidence taken *ex parte*, without notice to or knowledge of the protesting importers' counsel; and that all these decisions and the proceedings underlying them, were by the member of the board who, as already pointed out, has stood at variance with all his colleagues on this issue, and is seemingly bent on maintaining a conception of the law and facts, completely and repeatedly discredited by the course of decisions.

"Precious Stones" as Defined by Legislative Enactment.

This court has repeatedly held that where Congress, in earlier enactments, has used terms with a clearly established significance, the same term used in a later act is to have the same meaning.

Robertson vs. Rosenthal, 132 U. S. 460.

"When, in a later act, Congress uses expressions that had a recognized meaning in a former act relating to the same subject, they intend to use them in the same sense in which they were first used, that is, with their recognized meaning."

Greenleaf vs. Goodrich, 11 Otto, 278.

And see:

Hollender vs. Magone, 149 U. S., 586.
Seeberger vs. Castro, 153 U. S., 32.

Congress has not once, but repeatedly, provided for "precious stones," in acts prior to the one in issue, in terms which prove that pearls, topaz, aquamarines and the other varieties with which we are concerned, were to be classed as such. We refer to:

Act of 1846 (9 Stats. 42) Schedule G, "Diamonds, gems, pearls, rubies, and other precious stones."

Act of March 2, 1861 (12 Stats. 178) Section 21. "Diamonds, cameos, mosaics, gems, pearls, rubies and other precious stones"

Act of June 30, 1864 (13 Stats. 202) Section 3. Provision worded precisely as the last

U. S. Revised Statutes, Sec. 2504. Provision worded precisely as the last.

(Note that cameos are most commonly of onyx and agate.)

In 1883 the provision was shortened (22 Stats. 488) to "precious stones of all kinds," and this language was repeated in the act of 1890 (26 Stats. 567).

In the case of Hahn vs. Erhardt, 46 Fed. Rep. *(supra)* the circuit judge ruled:

> "For the elaborate and somewhat involved phraseology which congress has from time to time used in the past when laying duty on this class of articles, there has been substituted the comprehensive phrase 'precious stones of all kinds.'"

Our opponent contends (pp. 14–15) that in the acts of 1894 and 1897, pearls have been "distinguished from precious stones." Were this so, we cannot see how the fact could bear on cases involving earlier acts in which pearls were beyond dispute included among precious stones. But examination of the later acts does not even leave this poor comfort for the petitioner. In both acts pearls and all other precious stones are grouped under a heading: "Jewelry and Precious Stones." Pearls are merely set off from the other stones because the references to cleaving, cutting, etc., would as to pearls be meaningless. Thus in paragraph 338, Act of 1894, the provision for the set or mounted precious stones is: "Precious stones, * * * if set, * * * including pearls set."

And while real pearls are thus *in part* separately mentioned from other real precious stones, no discrimination has come to be made between one and another of the imitation precious stones. They are still provided for in a single group.

Were the articles in suit not literally imitations of precious stones, their dutiable character would still be that of paragraph 454.

Thus, if the proofs showed that the stones imitated were Mexican onyx, marble and granite, or that while bearing the names of sundry precious stones the arti-

cles did not in fact imitate them and were not intended to imitate them, still, if with these facts the record also showed by adequate proof that in trade these articles were generally recognized as "imitations of precious stones," such would be their tariff character. The proposition is of course academic, for the record shows that the articles not only are, but logically must be, known to trade as such imitations, because they are such in fact. But it must be remembered that these cases concern, not the tariff provision for precious stones, but that for "imitations of precious stones," and the doctrine is, we think, fully settled, that if the trade meaning of tariff terms *has* peculiarities whereby it differs from their common meaning, such peculiar meaning must be adopted in applying the tariff laws.

Hedden vs. Richard, 149 U. S. 346.
Cadwalader vs. Zeh, 151 U. S. 171.
Sonn vs. Magone, 159 U. S. 417.

The foregoing argument equally well applies to our opponent's contention that a bead of precious stone is not a precious stone.

As on the other point, the undisputed testimony shows the contrary, as in fact we think our common knowledge shows it.

But were it not so, there is still no ground for asserting that the commercial or common limitation of precious stones equally applies to their imitations, and the proofs directly on the point in these cases show that these beads are commercially and in fact imitations of precious stones, *holes and all.*

It may be added that the repeated provisions of recent acts, for "pearls strung," among the precious stones, since pearls strung can be nothing else than *pearl beads*, flatly refutes the assertion that Congress does not regard beads as one of the forms of precious stones.

On the articles in controversy, there is neither conflict nor repugnancy between paragraphs 454, 445 and 108.

That last named is a mere residuary clause, so far as applicable to these articles at all, for manufactures of glass not specifically named in the act. As between 454 and 445, the only conflict would be as to those beads which imitate precious stones and were also imported loose, and as both provisions carry the same rate, such conflict would have no importance. Paragraph 445 would take all loose beads not imitating precious stones,—by far the majority of all,—454 would take all imitation stones not in bead form, or in bead form but not loose, and both paragraphs would equally well cover the remainder of precious stone bead imitations, while strung beads not imitating precious stones must go to paragraph 108.

This was perceived and held by the general appraisers in G. A. 1727, wherein, deciding that strung glass beads imitating turquoises were dutiable under No. 454, they added:

> "Had they been imported unthreaded and unstrung, the Board would feel inclined to hold they could with equal correctness be returned for duty at 10 per cent *ad valorem*, under paragraph 445 or 454, N. T."

Nor is the fact that unstrung beads have been designated in 445, any implication against strung ones being dutiable at the same rate under 454 *when they are such as imitate precious stones.* A vast variety of strung beads would still remain excluded from the low duty. Imitation precious stones in bead form are very different things from *mere* beads. For the latter, Congress provided the low rate only when loose. For the former, the

rate is available whether they are loose or strung. In the case of

U. S. vs. Bennett, 26 U. S. Appeals, 535,

it was held that a provision in the free list for "goatskins without the wool" raised no implication against the free entry, under a provision for "fur skins," of certain goatskins with the wool, *which were shown to be fur skins by trade recognition.* The Court ruled that their tariff character was to be measured by ascertaining whether the fur paragraph aptly described them, not by argumentative inferences from another paragraph which excluded them.

As to Quality.

The suggestion has been made by one of the general appraisers that imitations of precious stones, to be dutiable as such, must not only have all the attributes specified in paragraph 454, but must be excellent and not inferior imitations.

This is clearly repugnant to the doctrine that when the law has prescribed its own limitations, it is not for those charged with its enforcement to add others.

U. S. vs Goldenberg, 168 U. S. 394.

But aside from this, the suggestion is comically unreasonable, when directed to the act of 1890, because of the words in paragraph 454: "not exceeding one inch in dimensions". It is in evidence in these cases, and is common knowledge, that only the commonest and cheapest imitations run up to anything like an inch in size; hence the presence of that limit shows that fine articles were no more in the intent of Congress than within its words. In paragraph 120 of the same law a duty line is distinctly drawn by a cost limit; it could have been as easily done in No 454 had Congress desired to make any distinction between fine and poor

articles. *The distinction was not intended to be ther*
and it is not there. Its existence in the mind of a ge
eral appraiser is entitled to no weight in the courts.

The decisions of the circuit court of appeals we
correct, and they should be affirmed.

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No. 15 & 16.

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THE UNITED STATES, PETITIONER,
vs.
E. A. MORRISON & SON,
and
SAME PETITIONER
vs.
H. WOLFF & CO.

No. 15,

No. 16.

On Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Additional Brief for Respondents in Compliance with the Court's Suggestion of May 28, 1900.

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Supreme Court of the United States.

THE UNITED STATES, Petitioner, vs E. A. MORRISON & SON.	No 15
AND SAME PETITIONER vs H. WOLFF & CO.	No 16

Additional Brief for Respondents, in Compliance with the Court's Suggestion of May 28, 1900.

The court invites from counsel a further discussion of three points involved in these cases, which points are accordingly supposed to represent the only aspects of the matter on which the mind of the court is not made up. To the three questions propounded, counsel for the respondents answers as follows:

1 *The precise scope and effect, in this court, of the stipulation of March 18, 1897.*

This stipulation, found on p. 35 of the Morrison record (top), was made after the decision of the circuit court, and with the double purpose of shortening the appeal record

(to reduce cost of printing etc) and simplifying argument in the appellate court. The importer's claims had been allowed in part—on the loose or unstrung "masses of mat jewel stones"—by the general appraisers (record, p. 3, foot), and in further part—on the black "nailhead" beads, also loose, which were Exhibit 1—by the circuit court (77 Fed. Rep. 605), and as appeal from these decisions was in each case by the importers only, much matter of protest and evidence had thus become irrelevant to the issue remaining in dispute in the appellate court. The stipulation pruned away all such redundant matter, and then proceeded to delimit the ground for argument by asserting those conclusions on which counsel found their views in unison. It was not at all intended, nor could it, as is submitted, properly result, that the judicial view should be diverted, nor the judicial decision hampered, of any issue involved in the case as made by the proofs themselves. But that the merchandise was beads (a fact which could only militate against the importers if of any weight) was unanimously testified to by every witness, and thus seemed unchallengable and proper for stipulation. That these beads were imported strung on threads or strings for convenience of handling, was equally a proven fact, as well of the catseyes (Exhibit 2) and pearls (Exhibit 4), as of the masses of mat jewel stones *now found* loose as Exhibit 3, and which must not be confounded with those goods identically described, but *imported* loose, and therefore decided in the importers' favor on the protest, so that they were never involved in the court proceedings. Counsel may of course have been in common the victims of error in assuming, and therefore in stipulating, that this fact excluded the beads from a classification under Par. 445 on account of its words "loose, unthreaded or unstrung", and if this court should so conclude, it is thought that no stipulation of counsel, and no consequent order of the circuit judge, could estop the court from correcting such error by its

ruling. It must be observed that claim under Par. 445 is expressly made in the protest of the importers (record, p. 2, f. 4), and the application of this paragraph is therefore as much in issue as that of Par. 454 or Par. 108. It is further notable that a decision bringing glass beads on strings within the scope of Par. 445 would be precisely as acceptable to these and all like claimants, as that contended for, the rate of 10 *per cent. ad valorem* being common to both paragraphs.

What has been said as to stipulating these importations out from Par. 445 may be applied equally to the further part of the stipulation, in effect that the goods were dutiable either under Par. 454 or as assessed by the collector, under Par. 108 as unenumerated manufactures of glass. The ingenuity of counsel for the respondents had not sufficed to suggest any other part of the tariff law of 1890 which could reasonably apply to these glass beads, except the three already enumerated, and as he was convinced that Par. 445 excluded them as being strung, he willingly conceded that Par. 454 was alone available to prevent the assessment of the high rate of duty carried by Par. 108. Yet if this court does not agree in this conclusion, it is not thought that anything in the record can stop it from ruling according to its view. It is to be remembered that these two cases are merely representative, involving little in themselves, but having their importance in securing so clear and conclusive a judicial announcement as shall settle like issues involved in numerous other and waiting cases and protests.

2. *When, if at all, the purpose for which beads were threaded or strung might be held not to prevent their classification under Par. 445, act of 1890.*

This query involves discussion as to whether, in fact, counsel below were in common error in the chief matter of the stipulation above referred to.

We answer: Never. And in this view our opponent, on page 11 of his supplemental brief, clearly concurs. The argument to the contrary seems to us to be confined to the sole point that it is unreasonable, or inconsistent, for a low rate of duty to be laid on the commodity, glass beads, when imported loose in boxes or parcels, and a far higher rate when imported in the strictly interchangeable form of strings or bunches.

That some unreasonableness exists here, may be frankly conceded; but just such unreasonableness occurs beyond judicial cure, throughout every recent tariff law, from beginning to end. Thus in this same provision, 445, how completely unreasonable is the limitation of bead components to glass! There is a large importation of metal beads, which belong, by trade *status* and uses, to the same group as glass ones, and like those, are often imported unstrung. Yet by reason of this arbitrary limitation of Par. 445 to glass beads, these unstrung metal beads must find their classification elsewhere. And in Par. 454 the limit of "one inch in dimensions" is perfectly arbitrary. The records of treasury rulings show that imitations of precious stones are imported, some just under and others just over this limit of size, and precisely alike in all other respects. Yet the latter must pay a duty of 60 *per cent. ad valorem*, as unenumerated articles of glass, under Par. 108, while the smaller ones pay but 10 *per centum* under Par. 454. Surely it might reasonably be asked: was it the intention of Congress that such imitation stones as were $\frac{1}{100}$ short of an inch in dimensions should pay but 10 *per centum* and that those $\frac{1}{100}$ over an inch should pay six times as great a duty? Yet counsel would indeed have temerity, who should ask a court to construe or ignore so plain a provision of the law.

Going no further afield than the act and the schedule under consideration, examples of unreasonableness may be noted in the provision for "cork bark, cut into squares or cubes," at a certain duty, while all

other manufactures of cork pay a different rate. It had surely been more reasonable to provide for the bark cut into squares, cubes *or other shapes*, but Congress has not done so, and as a result, squares and cubes must pay one rate, while oblongs and triangles pay another. No plea of reasonableness can be made for this, but the language and its meaning are far too plain for construction.

In the same schedule, doll-heads of china, or of rubber, are to pay 35 *per centum*, while doll-bodies of the same substances are clearly excluded from that classification. Masks of paper or pulp may be entered at 35 *per centum*, while masks of cotton, such as are also largely used, must find their duty rate as unenumerated manufactures of cotton at 40 per centum in schedule I.

But nothing is more completely settled than that courts cannot assume the cure of these inconsistencies. The first general maxim of Vattel as to interpretation of laws is: It is not allowable to interpret what has no need of interpretation. And the decisions of this court, for a hundred years past, teem with applications of this rule, of which we herewith cite a few of those most applicable to such cases as the present.

> "*The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction.*"

MARSHALL, C. J., in U. S. vs. Wiltberger, 5 Wheat., 76 (95-96)

> "*What the legislative intention was, can be derived only from the words they have used; and we cannot speculate beyond the reasonable import of these words. The spirit of the act must be extracted from the words of the act, and not from conjectures aliunde.*"

STORY, J., in Gardner vs. Collins, 2 Pet. 58 (93)

The customs laws seem peculiarly within this doctrine, being neither moral nor corrective in nature, but providing an arbitrary system or series of taxes merely. In

Aldridge vs. Williams, 3 Howard, 9 the Court said :

> " *The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself ; and we must gather their intention from the language there used.*"

> " *The legislative intent is to be sought first from the words they have used. If these are clear we need go no further.*" " *Better to submit to a temporary inconvenience than to set the laws all afloat by laying down a canon of construction which leaves the plain words and seeks to spell out or guess at the supposed intent of the Legislature, contrary or supplementary to that which is clearly embodied in the words it has used.*"

BRADLEY, J., in Merrit vs. Welsh, 14 Otto 694.

> " *The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language he has used. He is presumed to know the meanings of words and the rules of grammar.*"

BREWER, J., in U. S. vs. Goldenberg, 168 U. S. 95.

Other cases to the same effect include :

Marine vs. Packham, 52 Fed. Rep. 579.
Rice vs. U. S., 53 Fed. Rep. 910.
re Downing, 56 Fed. Rep. 700.
Magone vs. VomCleff, 70 Fed. Rep. 980.
U. S. vs. Giese, 83 Fed. Rep. 692.
Coles vs. Collector, 100 Fed. Rep. 442.

Upon the precise point raised by the question, the

circuit court and circuit court of appeals at New York had passed, prior to the making of the stipulation herein. In

re Steiner, 66 Fed. Rep. 726
(Affirmed without opinion, 79 Fed. Rep. 1003).

beads strung on threads for convenience of handling and conveyance, precisely like those here *in that respect*, were claimed to be entitled to the benefit of Par. 445, on the theory that unless strung in the course of putting them to, or preparing them for, final use, they were as though unstrung. But the courts overruled this contention, and their decision has ever since been accepted as conclusive. And it is noteworthy that to neither of the courts below, in passing on the cases at bar, does any doubt on this point seem to have occurred.

In view of suggestions in the Government's supplemental brief, it is important to correct any misapprehension as to the character of the stringing of the beads in controversy. On pages 10 and 15 of said brief it is indicated as the view of counsel for the Government that these beads were not merely on strings for temporary convenience and assortment, but were so strung as to be necklaces, trimmings, etc. He takes this as conceded and as manifest. But it is not conceded, not manifest, and not fact, and no court in these cases has so found. The concession quoted on his page 10 meant only what it said, and not, as counsel seems to think, something further, as to the purpose of stringing the beads. As to the manifest fact, it is easily observable, since Exhibits 2 and 4 remain strung precisely as imported. Exhibit 3, now loose in a small parcel, was imported strung precisely as 2 and 4 now are, and a glance would suffice to show that none of these articles are strung *into* anything, nor for any purpose, save merely to be conveniently dealt with as beads or as stones. Nor can the words of the opinion in the appellate court be so read as to mean more. When that court stated as "a natural sugges-

tion" that "the Morrison importations were to be exclusively used for trimming ladies' hats or apparel," it of course did not refer to the strings of beads or stones, but to the separate beads or stones composing the strings.

To summarize, then; if any strung beads could be entitled to entry under Par 445, these would be they. But we not only admit but submit, that the plain and unambiguous language of that paragraph, perfectly practical of application, and productive of no absurdity, allows no scope or excuse for interpretation, and therefore excludes in effect, as it does in words, every bead not literally loose and unstrung.

3. *Whether it was the intent of Congress to impose a duty of 10 per cent under Par. 454, on such beads as imitated precious stones, were within one inch in dimensions, and were strung, while imposing a duty of 60 per cent on other strung glass beads.*

We answer: It was, unless all the decisions quoted and cited above are to be overridden. We have so fully discussed the court's second query, while arriving at a result adverse to our clients' interests, because we conceive the doctrine which compels that result, is conclusive for the affirmative here. Our opponent, who seems to concur with us as to both reason and conclusion on query 2, is forced on query 3 to turn his back on sound doctrine, and to contend that the plain letter of the law should be abandoned in favor of "conjectures *aliunde*." There is surely no word nor sentence in Par. 454, not plainly expressive of a clear idea. There is no obscurity, no dubiety, no repugnance between part and part. Mr. Justice BREWER, writing the opinion in U. S. vs. Goldenberg *(supra)*, declined an invitation to construe un-literally a far more equivocal tariff provision than the present, saying: "In the case at bar, the omission to make provision for the time of payment does not offend the moral sense; it involves

no injustice, oppression or absurdity. * * * Certainly there is nothing which imperatively requires the court to supply an omission in the statute, or to hold that Congress must have intended to do that which it has failed to do."

We cannot conceive that anything in or connected with Par. 454 supports the contention for interpretation. Its scope is as precise as that of Par. 445, and if there could in any case be doubt as to whether a stated article were within it, there can at all events be none as to these beads. An article, to be described by Par. 454, must imitate a precious stone or be accepted in trade as imitating one; it must be composed of paste or glass; it must be not exceeding one inch in dimensions, and it must be not set. That the strung beads in suit precisely fulfill each one of these requirements is so amply proven, so completely uncontradicted, and so fully demonstrated in our original brief, that we think it needless to do more than refer the court to what is there said. If the court have still, after noting the unchallenged evidence of several competent and disinterested witnesses, a doubt whether *beads* are one of the recognized forms of precious stones, we take the liberty of recalling attention to the two necklaces displayed upon the oral argument, one made of real pearls, and the other of real sapphires and diamonds, all in the form of beads. These were intended to give further concreteness to the proposition, as established by ample evidence, that beads are as much *precious stones*, when composed of pearls, rubies, cats-eyes, turquoise, etc., as are brilliants, cabochons, balls, button-stones, or any other common form of such stones. There is surely no escape from the conclusion that, since beads of really precious stone are *precious stones*, beads of imitations of these substances are *imitations of precious stones*.

What more can be necessary to make us conclude that when Congress declared imitations of precious stones to be dutiable at 10 *per cent*, it intended this

common and recognized form of such imitations to pay that duty?

There is an intimation in the question we are now discussing, as propounded by the court, of possible misapprehension on one point. The court in its query refers to articles imitating precious stones (*i. e.*, the beads here in controversy), but intended to be "used for the purposes for which beads are normally used." This leads us to point out, what is amply proven by the evidence, that these bead imitations of precious stones are *not* used for the purposes, and in the manner, for which other beads are normally used, but are a class by themselves, whose place and use are given them by their similitude to precious stones. They are known as "jewels." They are made and used "to imitate precious stones." They are to be *set*, either with wires or thread, as ornaments. While the record does not show, it is common knowledge, that beads not simulating precious stones are not set nor employed singly as ornaments, but are used in masses, in the making of jetted, beaded and "*passementerie*" trimmings, besides being largely used as adjuncts in the "*Kindergarten*," and for barter with savages. For some of these purposes very special classes of beads are made, as the bead imitations of jet, used solely in so-called "jet trimmings," those peculiar beads of bone, of wood, of metal etc. employed in making rosaries; the large, cubical beads of wood employed in the "abacus," etc. It is at once apparent, on reflection, that beads of other character could not be applied to the purposes of those imitating precious stones. Hence there would be no inconsistency in drawing a distinction, for duty purposes, between the strung glass bead which imitates a precious stone, and that one which does not, even were it not dictated by the inexorable force of the law's words as applied to the unchallenged facts in these cases. It seems to us hardly open to doubt, that if this same law had contained a

clause providing duty on "parts of rosaries," a string of the particular glass beads used for those articles would be dutiable thereunder, while excluded from Par. 445 because strung, and not as unenumerated manufactures of glass. The fact that they were beads would surely not militate against the acceptance of so literal a provision for them, merely because another part of the law contained a provision for glass beads, unstrung. And so, as to these bead imitations of precious stones, imported strung, we submit that as the circuit court of appeals held (not with any doubt, as implied by our opponent at page 9 of his supplemental brief), their right to be classified as imitations of precious stones is too clear to be obscured by a provision for all unstrung glass beads in another part of the law. To hold otherwise would be, it seems to us, to *create conflict by implication*,—a thing which we have no fear that the court will do.

On the side of the facts, the case was so fully argued last winter, and there was so little conflict in the evidence itself, that we deem it undesirable to re-argue it now, and shall content ourselves with noting a few errors in the supplemental Government brief. On page 5 it is asserted that Exhibits 2 and 3 are "not *en cabochon*." The Century Dictionary thus defines cabochon: "A polished but uncut precious stone. En cabochon, in the style of a cabochon, that is, rounded convex on top, and flat, concave, or convex on the back, without facets."

Examination of the exhibits will readily demonstrate whether or not they fulfill this definition. And Lamont, the only witness who used the term, says (Morrison R.. p 17) that they are *en cabochon*.

The singular views of the witness Schmalhausen are again cited on our opponent's p. 6, as often on his original brief. As every other witness in the case on the points involved contradicted his views flatly, it

would seem that one might as well cite, to control this court, the dissent of one of its members from a decision of the full bench.

A similar comment may be made concerning the quotation at p. 7, from Judge WHEELER's opinion in these cases. Judge WHEELER strangely confused the articles in the cases, which included no "variegated beads" except the catseyes, made to imitate an equally "variegated" *(chatoyant)* precious stone;—in which the imitation pearls, said by the learned judge to depend on "the wax" for their similitude, were shown by unchallenged evidence to contain *absolutely no wax*, while his assertion that the articles were "not capable of being set", was in contradiction of equally unchallenged evidence showing them to be employed by setting, every day in the year. These errors were carefully corrected in the appellate court; indeed their correction was one main purpose of the appeal,—and there can surely be no advantage in basing arguments, in this court, on the erroneous and discarded assertions of the circuit judge.

On p. 8 our opponent suggests that "beads" and "jewels" are interchangeable terms in trade, citing p. 7 of the Morrison record in proof. Examination of that page will show that this is a complete misapprehension. The evidence is that those two terms are interchangeable *as to these bead imitation precious stones*, but not at all as to any other beads;—a difference which we think is of vital importance.

On p. 18 a suggestion is made as to elaborate paste imitations of royal and family jewels. It may be allowable in connection, to remind the court of the shrewd query addressed to the Government counsel during oral argument; *as to whether he contended that the benefit of low duties was to be confined to imitations so fine as might deceive American purchasers.* Not only are the imitations of historic gems not subjects of trade and importation, but the contention that such alone are entitled to the low duty cannot stand, in view of the unquestionable right of the

plainest and cheapest loose glass bead to entry at the same rate. And the same circumstance is fatal to the further inference, sought, on p. 20, to be derived from the placing of a higher duty on real precious stones. The manifest reason for separately providing (in later acts; not in the one here involved,)—for pearls and for other precious stones, is that the conditions attached to the others,—"cut but not set," would be comically irrelevant to pearls, which are never "cut,"—*i. e*, cut to form and facetted. Moreover, the entire attempt involved in these arguments, to persuade the court by interpretation to narrow the effect or expand the limitations set up by the plain words of Par. 454, must fail because those cogent reasons which alone warrant such interpretation under the decisions, are absolutely lacking. That such is the *ultima ratio* of the argument, is clearly apparent when the learned counsel, on his pp. 23–24, is reduced to asserting as mere *ipse dixit* that these "are not *such* imitations of precious stones" as the law intends. This conclusion well illustrates the fallacy of seeking, in Par. 454, other characteristics than its plain words require. With all those requirements the stones in suit precisely comply. Once permit departure from the limits set up by the law, and it becomes merely a matter of individual opinion, *what sort* of imitation stones the law-makers intended.

With the appendix of the opposing brief we have little concern. It cannot be read without leaving the conviction that in the popular or received meaning of words, the lexicographers agree with our own preconception, and that the class of "precious stones" includes many more than the four rarest to which our opponent would limit it. It seems as clear that pearls, agates and moonstones are precious stones as that amber is not one.

And with these comments, we confidently leave the cases in the hands of the court.

ALBERT COMSTOCK,
of Counsel for Respondents.

Supreme Court of the United States.

Nos. 15 and 16.—October Term, 1900.

The United States, Petitioner, vs. E. A. Morrison & Son.	On writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit.
The United States, Petitioner, vs. H. Wolff & Co.	

[December 17, 1900.]

Mr. Justice McKenna delivered the opinion of the Court.

These cases are concerned with the classification of certain articles imported by the respondents under the tariff act of 1890. Those imported by E. A. Morrison & Son were variously colored in imitation of "cat's eyes" or "tiger's eyes," and were strung. Others were colored in resemblance to the garnet, aqua marine, moonstone and topaz. Those imported by Wolff & Co. were in imitation of pearls, it is claimed, and were also strung. The contention is as to how they shall be classified or made dutiable—whether under paragraph 108 or under paragraph 454 of the act of 1890.

Paragraph 108 provides:

"Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem."

Paragraph 454 provides:

"Precious stones of all kinds, cut but not set, ten per centum ad valorem; if set, and not specially provided for in this act, twenty-five per centum ad valorem. Imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem."

The board of appraisers decided that the merchandise was dutiable under paragraph 108, at sixty per cent. The decision was affirmed by the Circuit Court. (84 Fed. Rep. 444.) The Circuit Court was reversed by the Circuit Court of Appeals on the appeal of the respondents. (55 U. S. App. 406.) The cases are here on certiorari.

There was a dispute between counsel whether the articles represented by Exhibit 3 were involved in the pending appeal. That dispute seems to be settled by the concession of counsel for United States that they

are. At any rate, we do not consider the dispute important. We shall assume that all the articles are beads strung. The opinions of the Circuit Court and the Circuit Court of Appeals dealt with beads strung and their classification, and the same questions involved are here for consideration. At the taking of the testimony counsel for respondents made as to Exhibit 2 (so-called "cat's eyes") the following concession:

"The importer concedes that they were imported upon strings, and that the claim that they were entitled to entry as beads, loose, unthreaded, or unstrung, is not insisted on."

And in the Court of Appeals it was stipulated among things (the stipulation is a part of the record here) "that the merchandise herein involved was in fact beads, and was in fact threaded or strung at the time of its importation, and was thereby excluded from classification under paragraph 445, act of October 1, 1890, and that unless this court shall hold that it was dutiable under paragraph 454 of the said act, as imitations of precious stones, &c., it was properly classified by the collector of customs under paragraph 108 of the said act as manufactures of glass not specially provided for."

We have therefore only to consider whether the merchandise represented by all of the exhibits was or was not imitations of precious stones. In passing upon and determining these alternatives, we do not consider it necessary to detail the testimony of the witnesses. If we should regard it literally, and concede, that though conflicting, it preponderates in favor of the view that the articles imported were known in trade as imitations of precious stones, we do not consider that that alone should determine our judgment. If the testimony shows the articles to be imitations of precious stones, it also shows them to be beads, and it is stipulated that they were "in fact beads," and were "in fact threaded or strung" at the time of their importation. If they are entitled to a double designation, how are they to be classified? The answer would be easy and ready under prior tariff acts.

From an early day up to and including the act of 1883 beads had separate classification, and were dutiable at a higher rate than precious stones or imitations of them. Precious stones set and unset; imitations of them set or unset, and compositions of glass or paste when not set, were separately mentioned, and bore a different rate of duty from beads, and were not confounded with beads by resemblances, indeed not always by identity of material.

As early as 1858 the Treasury Department decided that genuine pearls, when imported strung on a thread to be used as beads for necklaces without further manufacture, were dutiable as beads. And later jet and coral necklaces were classed as beads and bead ornaments. Also glass balls and oval pieces of onyx, and pieces of glass or paste capable of being strung, were held to be beads against a claim of being imitations of precious stones.

A summary of the acts may be useful. In the act of 1832, under the description of "composition, wax or amber beads; all other beads, not otherwise enumerated," they were made dutiable at fifteen per cent. ad valorem. In the act of 1842 they were dutiable at twenty-five per cent. In that of 1846 the description was "beads of amber, composition or wax, and all other beads, thirty per cent. ad valorem." The description and duty were the same in the act of 1861. In the statutes enacted between 1861 and the Revised Statutes, beads or imitations of precious stones are not specifically mentioned. In the Revised Statutes beads specifically reappear, and were classified "all beads and bead ornaments except amber: fifty per cent. ad valorem." In the act of 1883 the classification was "beads and bead ornaments of all kinds except amber, fifty per cent. ad valorem."

The act of 1890, which is now under consideration, does not contain in all respects the specific classification of the prior acts. The only classification of beads by name is in paragraph 445, which provides "that glass beads, loose, unthreaded or unstrung," shall be dutiable at ten per cent. ad valorem. The opposite condition—beads not loose, not threaded or strung—is not specifically mentioned.

It cannot be said they cease to exist with the passage of the act of 1890 or were unprovided for by it. They necessarily must be classified some other way than by name; but do they thereby lose their distinction, and, while they are "in facts beads threaded and strung at the time of importation," do they cease to be that for lower duties by being made to resemble something else—to make the application to the pending case, to resemble some precious stone? That its purpose was to impose lower duties cannot be said of the act of 1890, nor can it be contended that such result was attained by any change of its provisions in regard to precious stones or their imitations.

In prior acts the rates on beads were higher than the rates on precious stones or imitations of them. Precious stones bore no higher rate than ten per cent. ad valorem. They, however, were not specifically mentioned in all acts. They were mentioned in the act of 1816, and were dutiable at seven and one-half per cent. They were mentioned in the act of 1842, and were dutiable at ten per cent. Imitations were dutiable at the same rate. The description was on "gems, pearls or precious stones seven per centum ad valorem; on imitations thereof, and compositions of glass or paste . . . set or not set, seven and a half per centum ad valorem." There was no specific enumeration in the act of 1861 of precious stones or imitations of them, nor of the latter in any act until the publication of the Revised Statutes, where they appear as follows: "Precious stones and jewelry—diamonds, cameos, mosaics, gems, pearls, rubies, and other precious stones, when not set, ten per centum ad valorem; when set in gold, silver,

or other metal, or on imitations thereof and all other jewelry—twenty-five per centum ad valorem."

In the act of 1883 precious stones not set bore a duty of ten per cent. Imitations of precious stones were not specifically mentioned. They came under the provision for compositions of glass or paste, not set, and were dutiable at ten per cent. If set (and precious stones if set), were classified as jewelry, and were subject to a duty of twenty-five per cent.

In the act of 1890 pearls are not grouped, as in some prior acts, with the diamond and ruby as precious stones. They have a separate classification, and are dutiable, if not set, at ten per cent. Precious stones are more carefully distinguished than under the act of 1883. The provision for them is as follows:

454. Precious stones of all kinds,

cut, but not set, ten per centum ad valorem;

if set, and not specially provided for in this act, twenty-five per centum ad valorem.

Imitations of precious stones composed of paste or glass, not exceeding one inch in dimensions, not set, ten per centum ad valorem.

If set, they seem to become jewelry under paragraph 452, and dutiable at fifty per centum ad valorem.

From this review it is evident that in prior tariff acts beads were classified separately from imitations of precious stones, and were regarded as distinct from them and dutiable at a much higher rate. Can it be said that the act of 1890 suddenly changed a purpose so constant throughout previous legislation, and not express the change but leave it to be inferred from indefinite and ambiguous provisions—provisions which had not had that effect nor were intended to have that effect? We think not.

If it be said they were only precluded from that effect by the specific provisions for beads and that such provisions are not in the act of 1890, the answer is twofold (1) that there is provision which applies to and embraces them. They are undoubtedly "glass and manufactures of glass," and the adequacy of that description, which is the description of paragraph 108, to include them cannot be denied. An imitation of a precious stone may be a manufacture of glass, but the latter is not necessarily an imitation of a precious stone, or, more narrowly, an imitation of a precious stone within the meaning of a tariff statute. Every resemblance would not make such imitation, and the suggestion of the counsel for the United States is not without its weight, that the capability and purpose of setting must be considered. The condition seems to have been contemplated by the statute, and in the testimony for the importers there was an attempt to satisfy it. Witnesses testified that while the articles were beads, they could be set and sometimes were set. Undoubtedly they could be fixed in metal, and so arranged as to conceal their perforations, but that was not their purpose or

use. Their purpose and use were for hat or dress trimmings, or to ornament embroideries. It may be that in construing a tariff act it is the essential nature of the article, not the purpose of the importer, which determines its classification; but if color may be regarded to bring the article to the resemblance of a precious stone its other conditions may be regarded to bring it to the character of a bead—a manufacture of glass, a mere hat or dress trimming, or an ornament for embroidery.

(2.) If the act of 1890 did not as specifically provide for beads as prior acts, glass beads as such were in the legislative mind and their various conditions contemplated. It was impossible to have in contemplation glass beads, loose, unthreaded and unstrung (445), and not have the exact opposite in contemplation—beads not loose, beads threaded and strung, and made provision for them. What provision? Were they to be dutiable at the same or at a higher rate than beads unthreaded or unstrung? If at the same rate—if *all* beads were to be dutiable at the same rate, why have qualified any of them? Were some to be dutiable at one rate and some at another rate? If made of plain glass, were they to be dutiable at sixty per centum under paragraph 108; if tinted or made to the color of some precious stone, were they to be dutiable at ten per centum under paragraph 454? No reason is assigned for such discrimination, and we are not disposed to infer it. It is a more reasonable inference that beads threaded of all kinds were intended to be dutiable at a higher rate than beads unthreaded, and if there can be a choice of provisions that intention must determine. Indeed, admitting that either provision (paragraph 108 or paragraph 454) equally applied, the statute prescribed the rule to be that "if two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates." (Section 5.)

The judgment of the Circuit Court of Appeals is reversed, and that of the Circuit Court is affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.